

HB0243S01 compared with HB0243

~~text~~ shows text that was in HB0243 but was deleted in HB0243S01.

text shows text that was not in HB0243 but was inserted into HB0243S01.

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Representative Francis D. Gibson proposes the following substitute bill:

PRIVACY PROTECTION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Francis D. Gibson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill creates the position of data privacy officer and the Personal Privacy Oversight Committee in the Office of the State Auditor.

Highlighted Provisions:

This bill:

- ▶ authorizes the state auditor to appoint and oversee a data privacy officer and the members of the Personal Privacy Oversight Committee;
 - ▶ authorizes the state auditor to require government entities to halt the use of certain technologies or privacy policies, subject to legislative override;
 - ▶ authorizes the data privacy officer, with the assistance of the Personal Privacy Oversight Committee, to review the data privacy practices of government entities;
- and

HB0243S01 compared with HB0243

- ▶ creates a reporting requirement for the data privacy officer.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

67-3-1, as last amended by Laws of Utah 2018, Chapters 200 and 256

ENACTS:

67-3-12, Utah Code Annotated 1953

67-3-13, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **67-3-1** is amended to read:

67-3-1. Functions and duties.

(1) (a) The state auditor is the auditor of public accounts and is independent of any executive or administrative officers of the state.

(b) The state auditor is not limited in the selection of personnel or in the determination of the reasonable and necessary expenses of the state auditor's office.

(2) The state auditor shall examine and certify annually in respect to each fiscal year, financial statements showing:

(a) the condition of the state's finances;

(b) the revenues received or accrued;

(c) expenditures paid or accrued;

(d) the amount of unexpended or unencumbered balances of the appropriations to the agencies, departments, divisions, commissions, and institutions; and

(e) the cash balances of the funds in the custody of the state treasurer.

(3) (a) The state auditor shall:

(i) audit each permanent fund, each special fund, the General Fund, and the accounts of any department of state government or any independent agency or public corporation as the law requires, as the auditor determines is necessary, or upon request of the governor or the

HB0243S01 compared with HB0243

Legislature;

(ii) perform the audits in accordance with generally accepted auditing standards and other auditing procedures as promulgated by recognized authoritative bodies;

(iii) as the auditor determines is necessary, conduct the audits to determine:

(A) honesty and integrity in fiscal affairs;

(B) accuracy and reliability of financial statements;

(C) effectiveness and adequacy of financial controls; and

(D) compliance with the law.

(b) If any state entity receives federal funding, the state auditor shall ensure that the audit is performed in accordance with federal audit requirements.

(c) (i) The costs of the federal compliance portion of the audit may be paid from an appropriation to the state auditor from the General Fund.

(ii) If an appropriation is not provided, or if the federal government does not specifically provide for payment of audit costs, the costs of the federal compliance portions of the audit shall be allocated on the basis of the percentage that each state entity's federal funding bears to the total federal funds received by the state.

(iii) The allocation shall be adjusted to reflect any reduced audit time required to audit funds passed through the state to local governments and to reflect any reduction in audit time obtained through the use of internal auditors working under the direction of the state auditor.

(4) (a) Except as provided in Subsection (4)(b), the state auditor shall, in addition to financial audits, and as the auditor determines is necessary, conduct performance and special purpose audits, examinations, and reviews of any entity that receives public funds, including a determination of any or all of the following:

(i) the honesty and integrity of all [its] the entity's fiscal affairs;

(ii) whether [~~or not its~~] the entity's administrators have faithfully complied with legislative intent;

(iii) whether [~~or not its~~] the entity's operations have been conducted in an efficient, effective, and cost-efficient manner;

(iv) whether [~~or not its~~] the entity's programs have been effective in accomplishing the intended objectives; and

(v) whether [~~or not its~~] the entity's management, control, and information systems are

HB0243S01 compared with HB0243

adequate, effective, and secure.

(b) The auditor may not conduct performance and special purpose audits, examinations, and reviews of any entity that receives public funds if the entity:

(i) has an elected auditor; and

(ii) has, within the entity's last budget year, had [~~its~~] the entity's financial statements or performance formally reviewed by another outside auditor.

(5) The state auditor:

(a) shall administer any oath or affirmation necessary to the performance of the duties of the auditor's office~~];~~ and

(b) may:

(i) subpoena witnesses and documents, whether electronic or otherwise~~];~~ and

(ii) examine into any matter that the auditor considers necessary.

(6) The state auditor may require all persons who have had the disposition or management of any property of this state or its political subdivisions to submit statements regarding [~~it~~] the property at the time and in the form that the auditor requires.

(7) The state auditor shall:

(a) except where otherwise provided by law, institute suits in Salt Lake County in relation to the assessment, collection, and payment of [~~its~~] revenues against:

(i) persons who by any means have become entrusted with public money or property and have failed to pay over or deliver the money or property; and

(ii) all debtors of the state;

(b) collect and pay into the state treasury all fees received by the state auditor;

(c) perform the duties of a member of all boards of which the state auditor is a member by the constitution or laws of the state, and any other duties that are prescribed by the constitution and by law;

(d) stop the payment of the salary of any state official or state employee who:

(i) refuses to settle accounts or provide required statements about the custody and disposition of public funds or other state property;

(ii) refuses, neglects, or ignores the instruction of the state auditor or any controlling board or department head with respect to the manner of keeping prescribed accounts or funds;

or

HB0243S01 compared with HB0243

(iii) fails to correct any delinquencies, improper procedures, and errors brought to the official's or employee's attention;

(e) establish accounting systems, methods, and forms for public accounts in all taxing or fee-assessing units of the state in the interest of uniformity, efficiency, and economy;

(f) superintend the contractual auditing of all state accounts;

(g) subject to Subsection (8)(a), withhold state allocated funds or the disbursement of property taxes from a state or local taxing or fee-assessing unit, if necessary, to ensure that officials and employees in those taxing units comply with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds;

(h) subject to Subsection (9), withhold the disbursement of tax money from any county, if necessary, to ensure that officials and employees in the county comply with Section 59-2-303.1; and

(i) withhold state allocated funds or the disbursement of property taxes from a local government entity or a limited purpose entity, as those terms are defined in Section 67-1a-15 if the state auditor finds the withholding necessary to ensure that the entity registers and maintains the entity's registration with the lieutenant governor, in accordance with Section 67-1a-15.

(8) (a) Except as otherwise provided by law, the state auditor may not withhold funds under Subsection (7)(g) until a state or local taxing or fee-assessing unit has received formal written notice of noncompliance from the auditor and has been given 60 days to make the specified corrections.

(b) If, after receiving notice under Subsection (8)(a), a state or independent local fee-assessing unit that exclusively assesses fees has not made corrections to comply with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds, the state auditor:

(i) shall provide a recommended timeline for corrective actions; [~~and~~]

(ii) may prohibit the state or local fee-assessing unit from accessing money held by the state; and

(iii) may prohibit a state or local fee-assessing unit from accessing money held in an account of a financial institution by filing an action in district court requesting an order of the court to prohibit a financial institution from providing the fee-assessing unit access to an

HB0243S01 compared with HB0243

account.

(c) The state auditor shall remove a limitation on accessing funds under Subsection (8)(b) upon compliance with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds.

(d) If a local taxing or fee-assessing unit has not adopted a budget in compliance with state law, the state auditor:

(i) shall provide notice to the taxing or fee-assessing unit of the unit's failure to comply;

(ii) may prohibit the taxing or fee-assessing unit from accessing money held by the state; and

(iii) may prohibit a taxing or fee-assessing unit from accessing money held in an account of a financial institution by:

(A) contacting the taxing or fee-assessing unit's financial institution and requesting that the institution prohibit access to the account; or

(B) filing an action in district court requesting an order of the court to prohibit a financial institution from providing the taxing or fee-assessing unit access to an account.

(e) If the local taxing or fee-assessing unit adopts a budget in compliance with state law, the state auditor shall eliminate a limitation on accessing funds described in Subsection (8)(d).

(9) The state auditor may not withhold funds under Subsection (7)(h) until a county has received formal written notice of noncompliance from the auditor and has been given 60 days to make the specified corrections.

(10) (a) The state auditor may not withhold funds under Subsection (7)(i) until the state auditor receives a notice of non-registration, as that term is defined in Section 67-1a-15.

(b) If the state auditor receives a notice of non-registration, the state auditor may prohibit the local government entity or limited purpose entity, as those terms are defined in Section 67-1a-15, from accessing:

(i) money held by the state; and

(ii) money held in an account of a financial institution by:

(A) contacting the entity's financial institution and requesting that the institution prohibit access to the account; or

HB0243S01 compared with HB0243

(B) filing an action in district court requesting an order of the court to prohibit a financial institution from providing the entity access to an account.

(c) The state auditor shall remove the prohibition on accessing funds described in Subsection (10)(b) if the state auditor received a notice of registration, as that term is defined in Section 67-1a-15, from the lieutenant governor.

(11) Notwithstanding Subsection (7)(g), (7)(h), (7)(i), (8)(b), (8)(d), or (10)(b), the state auditor:

(a) shall authorize a disbursement by a local government entity or limited purpose entity, as those terms are defined in Section 67-1a-15, or a state or local taxing or fee-assessing unit if the disbursement is necessary to:

(i) avoid a major disruption in the operations of the local government entity, limited purpose entity, or state or local taxing or fee-assessing unit; or

(ii) meet debt service obligations; and

(b) may authorize a disbursement by a local government entity, limited purpose entity, or state or local taxing or fee-assessing unit as the state auditor determines is appropriate.

(12) (a) The state auditor may seek relief under the Utah Rules of Civil Procedure to take temporary custody of public funds if an action is necessary to protect public funds from being improperly diverted from their intended public purpose.

(b) If the state auditor seeks relief under Subsection (12)(a):

(i) the state auditor is not required to exhaust the procedures in Subsection (7) or (8); and

(ii) the state treasurer may hold the public funds in accordance with Section 67-4-1 if a court orders the public funds to be protected from improper diversion from their public purpose.

(13) The state auditor shall:

(a) establish audit guidelines and procedures for audits of local mental health and substance abuse authorities and their contract providers, conducted pursuant to Title 17, Chapter 43, Part 2, Local Substance Abuse Authorities, Title 17, Chapter 43, Part 3, Local Mental Health Authorities, Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, and Title 62A, Chapter 15, Substance Abuse and Mental Health Act; and

HB0243S01 compared with HB0243

(b) ensure that those guidelines and procedures provide assurances to the state that:

(i) state and federal funds appropriated to local mental health authorities are used for mental health purposes;

(ii) a private provider under an annual or otherwise ongoing contract to provide comprehensive mental health programs or services for a local mental health authority is in compliance with state and local contract requirements, and state and federal law;

(iii) state and federal funds appropriated to local substance abuse authorities are used for substance abuse programs and services; and

(iv) a private provider under an annual or otherwise ongoing contract to provide comprehensive substance abuse programs or services for a local substance abuse authority is in compliance with state and local contract requirements, and state and federal law.

(14) The state auditor may, in accordance with the auditor's responsibilities for political subdivisions of the state as provided in Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, initiate audits or investigations of any political subdivision that are necessary to determine honesty and integrity in fiscal affairs, accuracy and reliability of financial statements, effectiveness, and adequacy of financial controls and compliance with the law.

(15) (a) The state auditor may not audit work that the state auditor performed before becoming state auditor.

(b) If the state auditor has previously been a responsible official in state government whose work has not yet been audited, the Legislature shall:

(i) designate how that work shall be audited; and

(ii) provide additional funding for those audits, if necessary.

(16) The state auditor shall:

(a) with the assistance, advice, and recommendations of an advisory committee appointed by the state auditor from among local district boards of trustees, officers, and employees and special service district boards, officers, and employees:

(i) prepare a Uniform Accounting Manual for Local Districts that:

(A) prescribes a uniform system of accounting and uniform budgeting and reporting procedures for local districts under Title 17B, Limited Purpose Local Government Entities - Local Districts, and special service districts under Title 17D, Chapter 1, Special Service

HB0243S01 compared with HB0243

District Act;

(B) conforms with generally accepted accounting principles; and

(C) prescribes reasonable exceptions and modifications for smaller districts to the uniform system of accounting, budgeting, and reporting;

(ii) maintain the manual under this Subsection (16)(a) so that [~~it~~] the manual continues to reflect generally accepted accounting principles;

(iii) conduct a continuing review and modification of procedures in order to improve them;

(iv) prepare and supply each district with suitable budget and reporting forms; and

(v) (A) prepare instructional materials, conduct training programs, and render other services considered necessary to assist local districts and special service districts in implementing the uniform accounting, budgeting, and reporting procedures; and

(B) ensure that any training described in Subsection (16)(a)(v)(A) complies with Title 63G, Chapter 22, State Training and Certification Requirements; and

(b) continually analyze and evaluate the accounting, budgeting, and reporting practices and experiences of specific local districts and special service districts selected by the state auditor and make the information available to all districts.

(17) (a) The following records in the custody or control of the state auditor are protected records under Title 63G, Chapter 2, Government Records Access and Management Act:

(i) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a past or present governmental employee if the information or allegation cannot be corroborated by the state auditor through other documents or evidence, and the records relating to the allegation are not relied upon by the state auditor in preparing a final audit report;

(ii) records and audit workpapers to the extent [~~they~~] the workpapers would disclose the identity of [~~a person~~] an individual who during the course of an audit, communicated the existence of any waste of public funds, property, or manpower, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the [~~person~~] individual be protected;

HB0243S01 compared with HB0243

(iii) before an audit is completed and the final audit report is released, records or drafts circulated to [~~a person~~] an individual who is not an employee or head of a governmental entity for [~~their~~] the individual's response or information;

(iv) records that would disclose an outline or part of any audit survey plans or audit program; and

(v) requests for audits, if disclosure would risk circumvention of an audit.

(b) The provisions of Subsections (17)(a)(i), (ii), and (iii) do not prohibit the disclosure of records or information that relate to a violation of the law by a governmental entity or employee to a government prosecutor or peace officer.

(c) The provisions of this Subsection (17) do not limit the authority otherwise given to the state auditor to classify a document as public, private, controlled, or protected under Title 63G, Chapter 2, Government Records Access and Management Act.

(d) (i) As used in this Subsection (17)(d), "record dispute" means a dispute between the state auditor and the subject of an audit performed by the state auditor as to whether the state auditor may release a record, as defined in Section 63G-2-103, to the public that the state auditor gained access to in the course of the state auditor's audit but which the subject of the audit claims is not subject to disclosure under Title 63G, Chapter 2, Government Records Access and Management Act.

(ii) The state auditor may submit a record dispute to the State Records Committee, created in Section 63G-2-501, for a determination of whether the state auditor may, in conjunction with the state auditor's release of an audit report, release to the public the record that is the subject of the record dispute.

(iii) The state auditor or the subject of the audit may seek judicial review of a State Records Committee determination under Subsection (17)(d)(ii), as provided in Section 63G-2-404.

(18) If the state auditor conducts an audit of an entity that the state auditor has previously audited and finds that the entity has not implemented a recommendation made by the state auditor in a previous audit, the state auditor shall notify the Legislative Management Committee through [~~its~~] the Legislative Management Committee's audit subcommittee that the entity has not implemented that recommendation.

(19) The state auditor shall:

HB0243S01 compared with HB0243

(a) with the advice and consent of the Senate, appoint the state privacy officer described in Section 67-3-12;

(b) appoint the members of the Personal Privacy Oversight Committee described in Section 67-3-13;

(c) publish the reviews and recommendations made by the state privacy officer and the Personal Privacy Oversight Committee; and

(d) determine, upon notification from the Personal Privacy Oversight Committee that a government entity is using a technology or privacy policy that fails to meet minimum acceptable standards, whether to require the government entity using the technology or policy to:

(i) if the government entity is a state entity, terminate the use of that technology or policy on or before June 1 of the year following the notification unless the Legislature authorizes the continued use of that technology or policy in statute; or

(ii) if the government entity is a local government entity, terminate the use of that technology or policy within ~~{90}~~180 days after the day on which the ~~{committee conducts}~~ local government entity receives notice of the ~~{review}~~ determination unless the local government authorizes the continued use of that technology or policy.

Section 2. Section 67-3-12 is enacted to read:

67-3-12. State privacy officer.

The state privacy officer shall:

(1) based on recommendations from the Personal Privacy Oversight Committee created in Section 67-3-13, develop guiding standards for best practices with respect to government privacy policy, technology uses related to personal privacy, and data security;

(2) based on recommendations from the Personal Privacy Oversight Committee, develop minimum acceptable standards for government privacy policies and technology uses related to personal privacy;

(3) compile information about government privacy policy, technology uses related to personal privacy, and data security;

(4) make public and maintain information about government privacy policy, technology uses related to personal privacy, and data security on the state auditor's website;

(5) provide government entities with educational and training materials developed with

HB0243S01 compared with HB0243

the input of the Personal Privacy Oversight Committee that include the following information:

(a) the privacy implications and civil liberties concerns of the government use of certain technologies;

(b) best practices for government collection and retention policies regarding personally identifiable information;

(c) best practices for government data security standards; and

(d) the purpose and the process of the state privacy officer and the Personal Privacy Oversight Committee;

(6) implement a process to analyze and respond to requests from individuals for the state privacy officer to review a government entity's use of technology that implicates the privacy of individuals' data;

(7) identify annually which government entity's technology use or data security policy poses the greatest risk to individual privacy and prioritize those technology uses or security policies for review;

(8) review each year, in as timely a manner as possible and with the assistance of the Personal Privacy Oversight Committee, the technology uses and privacy policies that the privacy officer identifies under Subsection (6) or (7) as posing the greatest risk to individuals' privacy;

(9) when reviewing a government entity's use of technology or privacy policy under Subsection (8), include in the review:

(a) details about the technology or the policy and the technology's or the policy's application;

(b) information about the type of data being used;

(c) information about how the data is obtained, stored, kept secure, and disposed;

(d) information about with whom the government entity shares the information;

(e) information about whether an individual can or should be able to opt out of the retention and sharing of the individual's data;

(f) information about how the government entity de-identifies or anonymizes data;

(g) a determination about the existence of alternative technology or improved practices to protect privacy; and

(h) a finding of whether the current government entity's use of technology or policy

HB0243S01 compared with HB0243

adequately protects individual privacy;

(10) after completing a review described in Subsection (9), determine:

(a) each entity's use of personally identifying information, including the entity's

practices regarding data:

(i) retention;

(ii) storage;

(iii) protection; and

(iv) sharing;

(b) the adequacy of the entity's practices in each of the areas described in Subsection

(10)(a); and

(c) for each of the areas described in Subsection (10)(a) that require reform, provide recommendations to the government entity for reform; and

(11) annually report, on or before October 1, to the Judiciary Interim Committee:

(a) the results of the reviews described in Subsection (8), if any reviews have been completed;

(b) the information described in Subsection (10); and

(c) recommendations for legislation based on the guiding standards and minimum standards described in Subsections (1) and (2).

Section 3. Section **67-3-13** is enacted to read:

67-3-13. Personal Privacy Oversight Committee.

(1) There is created within the Office of the State Auditor the Personal Privacy Oversight Committee.

(2) (a) The committee shall be composed of the following members appointed by the state auditor:

(~~f~~a)i) two members with experience in internet technology services, one of whom shall, at the time of appointment, provide internet technology services for a county or municipality;

(~~f~~b)ii) two members with experience in cybersecurity;

(~~f~~c)iii) two members representing private industry in technology;

(~~f~~d)iv) two members representing law enforcement, one of whom shall, at the time of appointment, serve in local law enforcement;

HB0243S01 compared with HB0243

(fe)v two members with experience in data privacy law;

(ff)vi one member with experience in data privacy policy; and

(fg)vii ~~two members~~ one member with experience in civil liberties law or policy and with specific experience in identifying whether the use of a technology or policy may result in disparate impacts on different populations.

(b) The committee shall be composed of one member with experience in civil liberties law who is appointed by the attorney general and, at the time of appointment, is an assistant attorney general.

(3) (a) Except as provided in Subsection (3)(b), the auditor shall appoint a member for a term of four years.

(b) The state auditor shall, at the time of appointment or reappointment, adjust the lengths of the terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(c) When the term of a current committee member expires, the state auditor shall reappoint the member or appoint a new member in accordance with this Subsection (3).

(4) (a) When a vacancy occurs in the membership for any reason, the state auditor shall appoint a replacement in accordance with Subsection (3) for the unexpired term.

(b) A member whose term has expired may continue to serve until a replacement is appointed.

(5) (a) The state privacy officer shall serve as chair of the committee.

(b) The committee shall select officers from the committee's members as the committee finds necessary.

(6) A majority of the members of the committee is a quorum.

(7) A member may not receive compensation or benefits for the member's service but may receive per diem and travel expenses incurred as a member of the committee at the rates established by the Division of Finance under:

(a) Sections 63A-3-106 and 63A-3-107; and

(b) rules made by the Division of Finance in accordance with Sections 63A-3-106 and 63A-3-107.

(8) A member shall refrain from participating in a review of:

(a) an entity of which the member is an employee; or

HB0243S01 compared with HB0243

(b) a technology in which the member has a financial interest.

(~~7~~9) The committee shall meet as required by the state privacy officer to accomplish the duties described in Subsection (~~8~~10).

(~~8~~10) (a) At the request of the state privacy officer, the committee shall review the proposed and current uses of technology described in Subsection 67-3-12(8).

(b) The committee shall notify the state auditor if the committee finds that a government entity's use of technology or privacy policy does not comply with the minimum acceptable standards of privacy protection described in Subsection 67-3-12(2).

(c) If the committee finds that a use of technology or a policy reviewed under Subsection (~~8~~10)(a) does meet the minimum acceptable standards of privacy protection, the committee shall review the technology use or policy again two years following the date of the initial review to determine if the use still meets acceptable privacy standards.