

GOVERNMENT RECORDS AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to government records.

Highlighted Provisions:

This bill:

▶ enacts a provision establishing a process for a governmental entity to petition for relief against a vexatious requester;

▶ provides for a hearing before the State Records Committee;

▶ allows for judicial review of the State Records Committee's decision;

▶ allows a court to award reasonable attorney fees to a responder for a vexatious requester petition found to be without merit and waives governmental immunity for a claim of attorney fees;

▶ authorizes the legislative branch and judicial branch to establish a process for obtaining relief against a vexatious requester; and

▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 [63G-2-201](#), as last amended by Laws of Utah 2019, Chapter 334
- 29 [63G-2-404](#), as last amended by Laws of Utah 2021, Chapter 325
- 30 [63G-2-702](#), as last amended by Laws of Utah 2012, Chapter 369
- 31 [63G-2-703](#), as last amended by Laws of Utah 2015, Chapter 258
- 32 [63G-7-301](#), as last amended by Laws of Utah 2022, Chapters 388 and 428

33 ENACTS:

34 [63G-2-209](#), Utah Code Annotated 1953

35

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

37 Section 1. Section **63G-2-201** is amended to read:

38 **63G-2-201. Provisions relating to records -- Public records -- Private, controlled,**
39 **protected, and other restricted records -- Disclosure and nondisclosure of records --**
40 **Certified copy of record -- Limits on obligation to respond to record request.**

41 (1) (a) Except as provided in Subsection (1)(b), a person has the right to inspect a
42 public record free of charge, and the right to take a copy of a public record during normal
43 working hours, subject to Sections [63G-2-203](#) and [63G-2-204](#).

44 (b) A right under Subsection (1)(a) does not apply with respect to a record:

45 (i) a copy of which the governmental entity has already provided to the person;
46 (ii) that is the subject of a records request that the governmental entity is not required
47 to fill under Subsection (8)(e); or

48 (iii) (A) that is accessible only by a computer or other electronic device owned or
49 controlled by the governmental entity;

50 (B) that is part of an electronic file that also contains a record that is private,
51 controlled, or protected; and

52 (C) that the governmental entity cannot readily segregate from the part of the electronic
53 file that contains a private, controlled, or protected record.

54 (2) A record is public unless otherwise expressly provided by statute.

55 (3) The following records are not public:

56 (a) a record that is private, controlled, or protected under Sections [63G-2-302](#),
57 [63G-2-303](#), [63G-2-304](#), and [63G-2-305](#); and

58 (b) a record to which access is restricted pursuant to court rule, another state statute,

59 federal statute, or federal regulation, including records for which access is governed or
60 restricted as a condition of participation in a state or federal program or for receiving state or
61 federal funds.

62 (4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or
63 63G-2-305 may be classified private, controlled, or protected.

64 (5) (a) A governmental entity may not disclose a record that is private, controlled, or
65 protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section
66 63G-2-202, 63G-2-206, or 63G-2-303.

67 (b) A governmental entity may disclose a record that is private under Subsection
68 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in
69 Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee,
70 determines that:

71 (i) there is no interest in restricting access to the record; or

72 (ii) the interests favoring access are greater than or equal to the interest favoring
73 restriction of access.

74 (c) In addition to the disclosure under Subsection (5)(b), a governmental entity may
75 disclose a record that is protected under Subsection 63G-2-305(51) if:

76 (i) the head of the governmental entity, or a designee, determines that the disclosure:

77 (A) is mutually beneficial to:

78 (I) the subject of the record;

79 (II) the governmental entity; and

80 (III) the public; and

81 (B) serves a public purpose related to:

82 (I) public safety; or

83 (II) consumer protection; and

84 (ii) the person who receives the record from the governmental entity agrees not to use
85 or allow the use of the record for advertising or solicitation purposes.

86 (6) (a) The disclosure of a record to which access is governed or limited pursuant to
87 court rule, another state statute, federal statute, or federal regulation, including a record for
88 which access is governed or limited as a condition of participation in a state or federal program
89 or for receiving state or federal funds, is governed by the specific provisions of that statute,

90 rule, or regulation.

91 (b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter
92 is not inconsistent with the statute, rule, or regulation.

93 (7) A governmental entity shall provide a person with a certified copy of a record if:

94 (a) the person requesting the record has a right to inspect it;

95 (b) the person identifies the record with reasonable specificity; and

96 (c) the person pays the lawful fees.

97 (8) In response to a request, a governmental entity is not required to:

98 (a) create a record;

99 (b) compile, format, manipulate, package, summarize, or tailor information;

100 (c) provide a record in a particular format, medium, or program not currently
101 maintained by the governmental entity;

102 (d) fulfill a person's records request if the request unreasonably duplicates prior records
103 requests from that person; ~~or~~

104 (e) fill a person's records request if:

105 (i) the record requested is:

106 (A) publicly accessible online; or

107 (B) included in a public publication or product produced by the governmental entity
108 receiving the request; and

109 (ii) the governmental entity:

110 (A) specifies to the person requesting the record where the record is accessible online;

111 or

112 (B) provides the person requesting the record with the public publication or product
113 and specifies where the record can be found in the public publication or product~~[-];~~ or

114 (f) fulfill a person's records request if:

115 (i) the person has been determined under Section [63G-2-209](#) to be a vexatious
116 requester;

117 (ii) the State Records Committee order determining the person to be a vexatious
118 requester provides that the governmental entity is not required to fulfill a request from the
119 person for a period of time; and

120 (iii) the period of time described in Subsection (8)(f)(ii) has not expired.

121 (9) (a) Although not required to do so, a governmental entity may, upon request from
122 the person who submitted the records request, compile, format, manipulate, package,
123 summarize, or tailor information or provide a record in a format, medium, or program not
124 currently maintained by the governmental entity.

125 (b) In determining whether to fulfill a request described in Subsection (9)(a), a
126 governmental entity may consider whether the governmental entity is able to fulfill the request
127 without unreasonably interfering with the governmental entity's duties and responsibilities.

128 (c) A governmental entity may require a person who makes a request under Subsection
129 (9)(a) to pay the governmental entity, in accordance with Section 63G-2-203, for providing the
130 information or record as requested.

131 (10) (a) Notwithstanding any other provision of this chapter, and subject to Subsection
132 (10)(b), a governmental entity is not required to respond to, or provide a record in response to,
133 a record request if the request is submitted by or in behalf of an individual who is confined in a
134 jail or other correctional facility following the individual's conviction.

135 (b) Subsection (10)(a) does not apply to:

136 (i) the first five record requests submitted to the governmental entity by or in behalf of
137 an individual described in Subsection (10)(a) during any calendar year requesting only a record
138 that contains a specific reference to the individual; or

139 (ii) a record request that is submitted by an attorney of an individual described in
140 Subsection (10)(a).

141 (11) (a) A governmental entity may allow a person requesting more than 50 pages of
142 records to copy the records if:

143 (i) the records are contained in files that do not contain records that are exempt from
144 disclosure, or the records may be segregated to remove private, protected, or controlled
145 information from disclosure; and

146 (ii) the governmental entity provides reasonable safeguards to protect the public from
147 the potential for loss of a public record.

148 (b) If the requirements of Subsection (11)(a) are met, the governmental entity may:

149 (i) provide the requester with the facilities for copying the requested records and
150 require that the requester make the copies; or

151 (ii) allow the requester to provide the requester's own copying facilities and personnel

152 to make the copies at the governmental entity's offices and waive the fees for copying the
153 records.

154 (12) (a) A governmental entity that owns an intellectual property right and that offers
155 the intellectual property right for sale or license may control by ordinance or policy the
156 duplication and distribution of the material based on terms the governmental entity considers to
157 be in the public interest.

158 (b) Nothing in this chapter shall be construed to limit or impair the rights or protections
159 granted to the governmental entity under federal copyright or patent law as a result of its
160 ownership of the intellectual property right.

161 (13) A governmental entity may not use the physical form, electronic or otherwise, in
162 which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and
163 receive a copy of a record under this chapter.

164 (14) Subject to the requirements of Subsection (8), a governmental entity shall provide
165 access to an electronic copy of a record in lieu of providing access to its paper equivalent if:

166 (a) the person making the request requests or states a preference for an electronic copy;

167 (b) the governmental entity currently maintains the record in an electronic format that
168 is reproducible and may be provided without reformatting or conversion; and

169 (c) the electronic copy of the record:

170 (i) does not disclose other records that are exempt from disclosure; or

171 (ii) may be segregated to protect private, protected, or controlled information from
172 disclosure without the undue expenditure of public resources or funds.

173 (15) In determining whether a record is properly classified as private under Subsection
174 [63G-2-302\(2\)\(d\)](#), the governmental entity, State Records Committee, local appeals board, or
175 court shall consider and weigh:

176 (a) any personal privacy interests, including those in images, that would be affected by
177 disclosure of the records in question; and

178 (b) any public interests served by disclosure.

179 Section 2. Section **63G-2-209** is enacted to read:

180 **63G-2-209. Vexatious requester.**

181 (1) As used in this section:

182 (a) "Committee" means the State Records Committee created in Section [63G-2-501](#).

183 (b) "Executive secretary" means an individual appointed as executive secretary under
184 Subsection 63G-2-502(3).

185 (c) "Respondent" means a person that a governmental entity claims is a vexatious
186 requester under this section.

187 (2) (a) A governmental entity may file a petition with the committee to request relief
188 from a person that the governmental entity claims is a vexatious requester.

189 (b) A petition under Subsection (2)(a) shall:

190 (i) be filed with the committee by submitting the petition to the executive secretary;

191 and

192 (ii) contain:

193 (A) the name, phone number, mailing address, and email address that the respondent
194 submitted to the governmental entity;

195 (B) a description of the conduct that the government entity claims demonstrates that
196 the respondent is a vexatious requester;

197 (C) a statement of the relief the governmental entity seeks; and

198 (D) a sworn declaration or an unsworn declaration, as those terms are defined in

199 Section 78B-18a-102.

200 (c) On the day the governmental entity files a petition under Subsection (2)(a), the
201 governmental entity shall send a copy of the petition to the respondent.

202 (3) (a) Except as provided in Subsection (3)(c), no later than seven business days after
203 receiving the petition the executive secretary shall schedule a hearing for the committee to
204 consider the petition, to be held:

205 (i) (A) at the next regularly scheduled committee meeting falling at least 16 calendar
206 days after the date the petition is filed but no later than 64 calendar days after the date the
207 petition is filed; or

208 (B) at a regularly scheduled committee meeting that is later than the period described
209 in Subsection (3)(a)(i)(A) if the later committee meeting is the first regularly scheduled
210 committee meeting at which there are fewer than 10 appeals scheduled to be heard; or

211 (ii) at a date sooner than a period described in Subsection (3)(a)(i) if the governmental
212 entity:

213 (A) requests an expedited hearing; and

214 (B) shows good cause for the expedited hearing.
215 (b) If the executive secretary schedules a hearing under Subsection (3)(a), the executive
216 secretary shall:
217 (i) send a copy of the petition to each member of the committee;
218 (ii) send a copy of the notice of hearing to the governmental entity, the respondent, and
219 each member of the committee; and
220 (iii) if applicable, send a copy of the respondent's statement under Subsection (3)(c)(ii)
221 to the governmental entity and each member of the committee.
222 (c) (i) The executive secretary may decline to schedule a hearing if:
223 (A) the executive secretary recommends that the committee deny the petition without a
224 hearing because the petition does not warrant a hearing;
225 (B) the executive secretary consults with the chair of the committee and at least one
226 other member of the committee; and
227 (C) the chair of the committee and all committee members with whom the executive
228 secretary consults under this Subsection (3)(c)(i) agree with the executive secretary's
229 recommendation to deny the petition without a hearing.
230 (ii) The executive secretary may, in making the determination described in Subsection
231 (3)(c)(i)(A), request that the respondent submit a written response to the petition.
232 (d) If the executive secretary declines to schedule a hearing in accordance with
233 Subsection (3)(c):
234 (i) the executive secretary shall send a notice to the governmental entity and the
235 respondent indicating that the request for a hearing has been denied and the reasons for the
236 denial; and
237 (ii) the committee shall:
238 (A) vote at the committee's next regular meeting to accept or reject the
239 recommendation to deny the petition without a hearing;
240 (B) issue an order that includes the reasons for the committee's decision to accept or
241 reject the recommendation; and
242 (C) if the committee rejects the recommendation to deny the petition without a hearing,
243 direct the executive secretary to schedule a hearing as provided in Subsection (3)(a).
244 (4) (a) No later than five business days before the hearing, the respondent may submit

245 to the executive secretary and the governmental entity a written statement in response to the
 246 governmental entity's petition.

247 (b) The written statement described in Subsection (4)(a) may be the same document as
 248 the respondent's written response described in Subsection (3)(c)(ii).

249 ~~§→ [(c) If a respondent fails to submit a written statement under this Subsection (4), the~~
 250 ~~respondent may not testify, present evidence, or comment on the issues at a hearing held under~~
 251 ~~this section.] ←§~~

252 (5) No later than 10 business days before a hearing under this section, a person whose
 253 legal interests may be substantially affected by the proceeding may file a request for
 254 intervention with the committee as provided in Subsection 63G-2-403(6).

255 (6) If a respondent fails to submit a written statement under Subsection (4) §→ [, whether or
 256 ~~not the respondent appears at a hearing scheduled under Subsection (3), or if the respondent~~
 257 ~~submits a written statement under Subsection (4) but] or ←§ fails to appear at the hearing, the~~
 258 committee shall:

259 (a) cancel the hearing; or

260 (b) hold the hearing §→ [without the respondent testifying, presenting evidence, or
 261 ~~commenting on the issues considered at the hearing] in accordance with Subsection (7) ←§ .~~

262 (7) (a) If the committee holds a hearing scheduled under Subsection (3), the committee
 263 shall:

264 (i) allow the governmental entity to testify, present evidence, and comment on the
 265 issues; and

266 (ii) allow the respondent to testify, present evidence, and comment on the issues if the
 267 respondent §→ [has submitted a written statement under Subsection (4) and] ←§ appears at the
 267a hearing.

268 (b) At the hearing, the committee may allow another interested person to comment on
 269 the issues.

270 (c) (i) Discovery is prohibited, but the committee may issue subpoenas or other orders
 271 to compel production of necessary testimony or evidence.

272 (ii) If the subject of a committee subpoena disobeys or fails to comply with the
 273 subpoena, the committee may file a motion with the district court for an order to compel
 274 obedience to the subpoena.

275 (8) (a) No later than seven business days after a hearing is held as scheduled under

276 Subsection (3) or the date on which a hearing cancelled under Subsection (6) was scheduled to
277 be held, the committee shall:

278 (i) determine, in accordance with Subsection (9), whether the governmental entity has
279 demonstrated that the respondent is a vexatious requester; and

280 (ii) issue a signed order that grants or denies the petition in whole or in part.

281 (b) Upon granting the petition in whole or in part, the committee may order that the
282 governmental entity is not required to fulfill requests from the respondent or a person that
283 submits a request on the respondent's behalf for a period of time that may not exceed one year.

284 (c) The committee's order shall contain:

285 (i) a statement of the reasons for the committee's decision;

286 (ii) if the petition is granted in whole or in part, a specific description of the conduct
287 the committee determines demonstrates that the respondent is a vexatious requester, including
288 any conduct the committee finds to constitute an abuse of the right of access to information
289 under this chapter or a substantial interference with the operations of the governmental entity;

290 (iii) a statement that the respondent or governmental entity may seek judicial review of
291 the committee's decision in district court as provided in Section [63G-2-404](#); and

292 (iv) a brief summary of the judicial review process, the time limits for seeking judicial
293 review, and a notice that in order to protect applicable rights in connection with the judicial
294 review, the person seeking judicial review of the committee's decision may wish to seek advice
295 from an attorney.

296 (9) In determining whether a governmental entity has demonstrated that the respondent
297 is a vexatious requester, the committee shall consider:

298 (a) the interests described in Section [63G-2-102](#);

299 (b) as applicable:

300 (i) the number of requests the respondent has submitted to the governmental entity,
301 including the number of pending record requests;

302 (ii) the scope, nature, content, language, and subject matter of record requests the
303 respondent has submitted to the governmental entity;

304 (iii) the nature, content, language, and subject matter of any communications to the
305 governmental entity related to a record request of the respondent; and

306 (iv) any pattern of conduct that the committee determines to constitute:

307 (A) an abuse of the right of access to information under this chapter; or
308 (B) substantial interference with the operations of the governmental entity; and
309 (c) any other factor the committee considers relevant.

310 (10) (a) A governmental entity or respondent aggrieved by the committee's decision
311 under this section may seek judicial review of the decision as provided in Section [63G-2-404](#).

312 (b) In a judicial review under Subsection (10)(a), the court may award reasonable
313 attorney fees to a respondent if:

314 (i) the respondent substantially prevails; and
315 (ii) the court determines that:

316 (A) the petition filed by the governmental entity under Subsection (2) is without merit;
317 and

318 (B) the governmental entity's actions in filing the petition lack a reasonable basis in
319 fact or law.

320 (c) Except for the waiver of immunity in Subsection [63G-7-301\(2\)\(e\)](#), a claim for
321 attorney fees under this Subsection (10) is not subject to Chapter 7, Governmental Immunity
322 Act of Utah.

323 (11) Notwithstanding any other provision of this chapter, a records request that a
324 governmental entity is not required to fulfill in accordance with an order issued under this
325 section may not be the subject of an appeal under Part 4, Appeals.

326 (12) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
327 the committee shall make rules to implement this section.

328 Section 3. Section **63G-2-404** is amended to read:

329 **63G-2-404. Judicial review.**

330 (1) (a) A petition for judicial review of an order or decision, as allowed under this part,
331 in Section [63G-2-209](#), or in Subsection [63G-2-701\(6\)\(a\)\(ii\)](#), shall be filed no later than 30 days
332 after the date of the order or decision.

333 (b) The State Records Committee is a necessary party to a petition for judicial review
334 of a State Records Committee order.

335 (c) The executive secretary of the State Records Committee shall be served with notice
336 of a petition for judicial review of a State Records Committee order, in accordance with the
337 Utah Rules of Civil Procedure.

338 (2) A petition for judicial review is a complaint governed by the Utah Rules of Civil
339 Procedure and shall contain:

- 340 (a) the petitioner's name and mailing address;
- 341 (b) a copy of the State Records Committee order from which the appeal is taken, if the
342 petitioner is seeking judicial review of an order of the State Records Committee;
- 343 (c) the name and mailing address of the governmental entity that issued the initial
344 determination with a copy of that determination;
- 345 (d) a request for relief specifying the type and extent of relief requested; and
- 346 (e) a statement of the reasons why the petitioner is entitled to relief.

347 (3) If the appeal is based on the denial of access to a protected record based on a claim
348 of business confidentiality, the court shall allow the claimant of business confidentiality to
349 provide to the court the reasons for the claim of business confidentiality.

350 (4) All additional pleadings and proceedings in the district court are governed by the
351 Utah Rules of Civil Procedure.

352 (5) The district court may review the disputed records. The review shall be in camera.

353 (6) (a) The court shall:

354 (i) make the court's decision de novo, but, for a petition seeking judicial review of a
355 State Records Committee order, allow introduction of evidence presented to the State Records
356 Committee;

357 (ii) determine all questions of fact and law without a jury; and

358 (iii) decide the issue at the earliest practical opportunity.

359 (b) A court may remand a petition for judicial review to the State Records Committee
360 if:

361 (i) the remand is to allow the State Records Committee to decide an issue that:

362 (A) involves access to a record; and

363 (B) the State Records Committee has not previously addressed in the proceeding that
364 led to the petition for judicial review; and

365 (ii) the court determines that remanding to the State Records Committee is in the best
366 interests of justice.

367 (7) (a) Except as provided in Section [63G-2-406](#), the court may, upon consideration
368 and weighing of the various interests and public policies pertinent to the classification and

369 disclosure or nondisclosure, order the disclosure of information properly classified as private,
370 controlled, or protected if the interest favoring access is greater than or equal to the interest
371 favoring restriction of access.

372 (b) The court shall consider and, where appropriate, limit the requester's use and
373 further disclosure of the record in order to protect privacy interests in the case of private or
374 controlled records, business confidentiality interests in the case of records protected under
375 Subsections [63G-2-305](#)(1) and (2), and privacy interests or the public interest in the case of
376 other protected records.

377 Section 4. Section [63G-2-702](#) is amended to read:

378 **[63G-2-702. Applicability to the judiciary.](#)**

379 (1) The judiciary is subject to the provisions of this chapter except as provided in this
380 section.

381 (2) (a) The judiciary is not subject to:

382 (i) [Section 63G-2-209](#); or

383 (ii) Part 4, Appeals, except as provided in Subsection [~~5~~] (6).

384 (b) The judiciary is not subject to Part 5, State Records Committee, and Part 6,
385 Collection of Information and Accuracy of Records.

386 (c) The judiciary is subject to only the following sections in Part 9, Public
387 Associations: Sections [63A-12-105](#) and [63A-12-106](#).

388 (3) The Judicial Council, the Administrative Office of the Courts, the courts, and other
389 administrative units in the judicial branch shall designate and classify their records in
390 accordance with Sections [63G-2-301](#) through [63G-2-305](#).

391 (4) Substantially consistent with the provisions of this chapter, the Judicial Council
392 shall:

393 (a) make rules governing requests for access, fees, classification, designation,
394 segregation, management, retention, denials and appeals of requests for access and retention,
395 and amendment of judicial records;

396 (b) establish an appellate board to handle appeals from denials of requests for access
397 and provide that a requester who is denied access by the appellate board may file a lawsuit in
398 district court; and

399 (c) provide standards for the management and retention of judicial records substantially

400 consistent with Section [63A-12-103](#).

401 (5) The Judicial Council may:

402 (a) establish a process for an administrative unit of the judicial branch to petition for
403 relief from a person that the administrative unit claims is a vexatious requester; and

404 (b) establish an appellate board to hear a petition for relief from a person that an
405 administrative unit of the judicial branch claims is a vexatious requester.

406 ~~[(5)]~~ (6) Rules governing appeals from denials of requests for access shall substantially
407 comply with the time limits provided in Section [63G-2-204](#) and Part 4, Appeals.

408 ~~[(6)]~~ (7) Upon request, the state archivist shall:

409 (a) assist with and advise concerning the establishment of a records management
410 program in the judicial branch; and

411 (b) as required by the judiciary, provide program services similar to those available to
412 the executive and legislative branches of government as provided in this chapter and Title 63A,
413 Chapter 12, Division of Archives and Records Service.

414 Section 5. Section **63G-2-703** is amended to read:

415 **63G-2-703. Applicability to the Legislature.**

416 (1) The Legislature and its staff offices shall designate and classify records in
417 accordance with Sections [63G-2-301](#) through [63G-2-305](#) as public, private, controlled, or
418 protected.

419 (2) (a) The Legislature and its staff offices are not subject to ~~[Section [63G-2-203](#) or to]~~:

420 (i) Section [63G-2-203](#) or [63G-2-209](#); or

421 (ii) Part 4, Appeals, Part 5, State Records Committee, or Part 6, Collection of
422 Information and Accuracy of Records.

423 (b) The Legislature is subject to only the following sections in Title 63A, Chapter 12,
424 Division of Archives and Records Service: Sections [63A-12-102](#) and [63A-12-106](#).

425 (3) The Legislature, through the Legislative Management Committee:

426 (a) (i) shall establish policies to handle requests for classification, designation, fees,
427 access, denials, segregation, appeals, management, retention, and amendment of records; and

428 ~~[(b)]~~ (ii) may establish an appellate board to hear appeals from denials of access[-]; and

429 (b) may establish:

430 (i) a process for determining that a person is a vexatious requester, including a process

431 for an appeal from a determination that a person is a vexatious requester; and

432 (ii) appropriate limitations on a person determined to be a vexatious requester.

433 (4) Policies shall include reasonable times for responding to access requests consistent
434 with the provisions of Part 2, Access to Records, fees, and reasonable time limits for appeals.

435 (5) Upon request, the state archivist shall:

436 (a) assist with and advise concerning the establishment of a records management
437 program in the Legislature; and

438 (b) as required by the Legislature, provide program services similar to those available
439 to the executive branch of government, as provided in this chapter and Title 63A, Chapter 12,
440 Division of Archives and Records Service.

441 Section 6. Section **63G-7-301** is amended to read:

442 **63G-7-301. Waivers of immunity.**

443 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual
444 obligation.

445 (b) Actions arising out of contractual rights or obligations are not subject to the
446 requirements of Section [63G-7-401](#), [63G-7-402](#), [63G-7-403](#), or [63G-7-601](#).

447 (c) The Division of Water Resources is not liable for failure to deliver water from a
448 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development
449 Act, if the failure to deliver the contractual amount of water is due to drought, other natural
450 condition, or safety condition that causes a deficiency in the amount of available water.

451 (2) Immunity from suit of each governmental entity is waived:

452 (a) as to any action brought to recover, obtain possession of, or quiet title to real or
453 personal property;

454 (b) as to any action brought to foreclose mortgages or other liens on real or personal
455 property, to determine any adverse claim on real or personal property, or to obtain an
456 adjudication about any mortgage or other lien that the governmental entity may have or claim
457 on real or personal property;

458 (c) as to any action based on the negligent destruction, damage, or loss of goods,
459 merchandise, or other property while it is in the possession of any governmental entity or
460 employee, if the property was seized for the purpose of forfeiture under any provision of state
461 law;

462 (d) subject to Section [63G-7-302](#), as to any action brought under the authority of Utah
463 Constitution, Article I, Section 22, for the recovery of compensation from the governmental
464 entity when the governmental entity has taken or damaged private property for public uses
465 without just compensation;

466 (e) as to any claim for attorney fees or costs under [~~Sections~~] [Section 63G-2-209](#),
467 [63G-2-405](#) [~~and~~], or [63G-2-802](#);

468 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees
469 Act;

470 (g) as to any action brought to obtain relief from a land use regulation that imposes a
471 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious
472 Land Use Act;

473 (h) except as provided in Subsection [63G-7-201\(3\)](#), as to any injury caused by:

474 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,
475 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

476 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,
477 or other public improvement;

478 (i) subject to Subsections [63G-7-101\(4\)](#) and [63G-7-201\(4\)](#), as to any injury
479 proximately caused by a negligent act or omission of an employee committed within the scope
480 of employment;

481 (j) notwithstanding Subsection [63G-7-101\(4\)](#), as to a claim for an injury resulting from
482 a sexual battery, as provided in Section [76-9-702.1](#), committed:

483 (i) against a student of a public elementary or secondary school, including a charter
484 school; and

485 (ii) by an employee of a public elementary or secondary school or charter school who:

486 (A) at the time of the sexual battery, held a position of special trust, as defined in
487 Section [76-5-404.1](#), with respect to the student;

488 (B) is criminally charged in connection with the sexual battery; and

489 (C) the public elementary or secondary school or charter school knew or in the exercise
490 of reasonable care should have known, at the time of the employee's hiring, to be a sex
491 offender, as defined in Section [77-41-102](#), required to register under Title 77, Chapter 41, Sex
492 and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a

- 493 background check under Section 53G-11-402; and
- 494 (k) as to any action brought under Section 78B-6-2303.
- 495 (3) (a) As used in this Subsection (3):
- 496 (i) "Code of conduct" means a code of conduct that:
- 497 (A) is not less stringent than a model code of conduct, created by the State Board of
- 498 Education, establishing a professional standard of care for preventing the conduct described in
- 499 Subsection (3)(a)(i)(D);
- 500 (B) is adopted by the applicable local education governing body;
- 501 (C) regulates behavior of a school employee toward a student; and
- 502 (D) includes a prohibition against any sexual conduct between an employee and a
- 503 student and against the employee and student sharing any sexually explicit or lewd
- 504 communication, image, or photograph.
- 505 (ii) "Local education agency" means:
- 506 (A) a school district;
- 507 (B) a charter school; or
- 508 (C) the Utah Schools for the Deaf and the Blind.
- 509 (iii) "Local education governing board" means:
- 510 (A) for a school district, the local school board;
- 511 (B) for a charter school, the charter school governing board; or
- 512 (C) for the Utah Schools for the Deaf and the Blind, the state board.
- 513 (iv) "Public school" means a public elementary or secondary school.
- 514 (v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).
- 515 (vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering
- 516 the term "child" in that section to include an individual under age 18.
- 517 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a
- 518 claim against a local education agency for an injury resulting from a sexual battery or sexual
- 519 abuse committed against a student of a public school by a paid employee of the public school
- 520 who is criminally charged in connection with the sexual battery or sexual abuse, unless:
- 521 (i) at the time of the sexual battery or sexual abuse, the public school was subject to a
- 522 code of conduct; and
- 523 (ii) before the sexual battery or sexual abuse occurred, the public school had:

524 (A) provided training on the code of conduct to the employee; and
525 (B) required the employee to sign a statement acknowledging that the employee has
526 read and understands the code of conduct.

527 (4) (a) As used in this Subsection (4):
528 (i) "Higher education institution" means an institution included within the state system
529 of higher education under Section 53B-1-102.
530 (ii) "Policy governing behavior" means a policy adopted by a higher education
531 institution or the Utah Board of Higher Education that:
532 (A) establishes a professional standard of care for preventing the conduct described in
533 Subsections (4)(a)(ii)(C) and (D);
534 (B) regulates behavior of a special trust employee toward a subordinate student;
535 (C) includes a prohibition against any sexual conduct between a special trust employee
536 and a subordinate student; and
537 (D) includes a prohibition against a special trust employee and subordinate student
538 sharing any sexually explicit or lewd communication, image, or photograph.
539 (iii) "Sexual battery" means the offense described in Section 76-9-702.1.
540 (iv) "Special trust employee" means an employee of a higher education institution who
541 is in a position of special trust, as defined in Section 76-5-404.1, with a higher education
542 student.
543 (v) "Subordinate student" means a student:
544 (A) of a higher education institution; and
545 (B) whose educational opportunities could be adversely impacted by a special trust
546 employee.

547 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a
548 claim for an injury resulting from a sexual battery committed against a subordinate student by a
549 special trust employee, unless:
550 (i) the institution proves that the special trust employee's behavior that otherwise would
551 constitute a sexual battery was:
552 (A) with a subordinate student who was at least 18 years old at the time of the
553 behavior; and
554 (B) with the student's consent; or

555 (ii) (A) at the time of the sexual battery, the higher education institution was subject to
556 a policy governing behavior; and

557 (B) before the sexual battery occurred, the higher education institution had taken steps
558 to implement and enforce the policy governing behavior.