

GOVERNMENT RECORDS AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill modifies provisions of the Government Records Access and Management Act.

Highlighted Provisions:

This bill:

- ▶ provides for the creation of a publicly accessible repository, on the Legislature's website, of email that legislators transfer to the repository;
 - ▶ provides for circumstances under which an email may be removed from the repository;
 - ▶ specifies that failure to transfer an email to the repository does not affect its classification;
 - ▶ modifies the membership of the State Records Committee;
 - ▶ makes initiative and referendum packets submitted to county clerks public records;
- and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

20A-7-206, as last amended by Laws of Utah 2011, Chapter 17

63G-2-301, as last amended by Laws of Utah 2012, Chapter 377

30 **63G-2-501**, as last amended by Laws of Utah 2010, Chapter 286

31 ENACTS:

32 **63G-2-208**, Utah Code Annotated 1953

33

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

35 Section 1. Section **20A-7-206** is amended to read:

36 **20A-7-206. Submitting the initiative petition -- Certification of signatures by the**
37 **county clerks -- Transfer to lieutenant governor.**

38 (1) (a) In order to qualify an initiative petition for placement on the regular general
39 election ballot, the sponsors shall deliver each signed and verified initiative packet to the
40 county clerk of the county in which the packet was circulated on or before the sooner of:

- 41 (i) 316 days after the day on which the application is filed; or
 - 42 (ii) the April 15 immediately before the next regular general election immediately after
- 43 the application is filed under Section 20A-7-202.

44 (b) A sponsor may not submit an initiative packet after the deadline established in this
45 Subsection (1).

46 (2) (a) No later than May 1 before the regular general election, the county clerk shall:

47 (i) check the names of all persons completing the verification for the initiative packet
48 to determine whether those persons are residents of Utah and are at least 18 years old; and

49 (ii) submit the name of each of those persons who is not a Utah resident or who is not
50 at least 18 years old to the attorney general and county attorney.

51 (b) The county clerk may not certify a signature under Subsection (3) on an initiative
52 packet that is not verified in accordance with Section 20A-7-205.

53 (3) No later than May 15 before the regular general election, the county clerk shall:

54 (a) determine whether each signer is a registered voter according to the requirements of
55 Section 20A-7-206.3;

56 (b) certify on the petition whether each name is that of a registered voter; and

57 (c) deliver all of the verified initiative packets to the lieutenant governor.

58 (4) Upon receipt of an initiative packet under Subsection (3) and any statement
59 submitted under Subsection 20A-7-205(3), the lieutenant governor shall remove from the
60 initiative petition a voter's signature if the voter has requested the removal in accordance with
61 Subsection 20A-7-205(3).

62 (5) In order to qualify an initiative petition for submission to the Legislature, the
63 sponsors shall deliver each signed and verified initiative packet to the county clerk of the
64 county in which the packet was circulated by the November 15 before the next annual general
65 session of the Legislature immediately after the application is filed under Section 20A-7-202.

66 (6) (a) No later than December 1 before the annual general session of the Legislature,
67 the county clerk shall:

68 (i) check the names of all persons completing the verification for the initiative packet
69 to determine whether those persons are Utah residents and are at least 18 years old; and

70 (ii) submit the name of each of those persons who is not a Utah resident or who is not
71 at least 18 years old to the attorney general and county attorney.

72 (b) The county clerk may not certify a signature under Subsection (7) on an initiative
73 packet that is not verified in accordance with Section 20A-7-205.

74 (7) No later than December 15 before the annual general session of the Legislature, the
75 county clerk shall:

76 (a) determine whether each signer is a registered voter according to the requirements of
77 Section 20A-7-206.3;

78 (b) certify on the petition whether each name is that of a registered voter; and

79 (c) deliver all of the verified initiative packets to the lieutenant governor.

80 [~~(8) Initiative packets are public once they are delivered to the county clerks.~~]

81 [~~(9)~~] (8) The sponsor or their representatives may not retrieve initiative packets from
82 the county clerks once they have submitted them.

83 Section 2. Section **63G-2-208** is enacted to read:

84 **63G-2-208. Public repository of legislative email.**

85 (1) As used in this section, "repository" means the repository of email described in

86 Subsection (2).

87 (2) (a) On or before January 1, 2014, the Legislature shall post on its website a publicly
88 accessible repository containing email that legislators transfer to it as provided in this section.

89 (b) The repository shall be searchable by sender, receiver, and subject.

90 (3) A legislator may transfer to the repository an email that the legislator sent or
91 received.

92 (4) An email in the repository may be removed from the repository if:

93 (a) the email was accidentally transferred to the repository;

94 (b) it is determined that the email is not a record or that the email is a private,
95 protected, or controlled record;

96 (c) the email is deleted pursuant to the Legislature's record retention policy; or

97 (d) for an email that is not removed from the repository earlier under Subsection (4)(a),
98 (b), or (c), at least two years have passed after the day the legislator first sent or received the
99 email.

100 (5) A legislator's failure to transfer an email to the repository does not alone mean that
101 the email is a private, protected, or controlled record.

102 Section 3. Section **63G-2-301** is amended to read:

103 **63G-2-301. Public records.**

104 (1) As used in this section:

105 (a) "Business address" means a single address of a governmental agency designated for
106 the public to contact an employee or officer of the governmental agency.

107 (b) "Business email address" means a single email address of a governmental agency
108 designated for the public to contact an employee or officer of the governmental agency.

109 (c) "Business telephone number" means a single telephone number of a governmental
110 agency designated for the public to contact an employee or officer of the governmental agency.

111 (2) The following records are public except to the extent they contain information
112 expressly permitted to be treated confidentially under the provisions of Subsections
113 63G-2-201(3)(b) and (6)(a):

- 114 (a) laws;
- 115 (b) the name, gender, gross compensation, job title, job description, business address,
116 business email address, business telephone number, number of hours worked per pay period,
117 dates of employment, and relevant education, previous employment, and similar job
118 qualifications of a current or former employee or officer of the governmental entity, excluding:
 - 119 (i) undercover law enforcement personnel; and
 - 120 (ii) investigative personnel if disclosure could reasonably be expected to impair the
121 effectiveness of investigations or endanger any individual's safety;
- 122 (c) final opinions, including concurring and dissenting opinions, and orders that are
123 made by a governmental entity in an administrative, adjudicative, or judicial proceeding except
124 that if the proceedings were properly closed to the public, the opinion and order may be
125 withheld to the extent that they contain information that is private, controlled, or protected;
- 126 (d) final interpretations of statutes or rules by a governmental entity unless classified as
127 protected as provided in Subsection 63G-2-305(16) or (17);
- 128 (e) information contained in or compiled from a transcript, minutes, or report of the
129 open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open
130 and Public Meetings Act, including the records of all votes of each member of the
131 governmental entity;
- 132 (f) judicial records unless a court orders the records to be restricted under the rules of
133 civil or criminal procedure or unless the records are private under this chapter;
- 134 (g) unless otherwise classified as private under Section 63G-2-303, records or parts of
135 records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning
136 commissions, the Division of Forestry, Fire, and State Lands, the School and Institutional Trust
137 Lands Administration, the Division of Oil, Gas, and Mining, the Division of Water Rights, or
138 other governmental entities that give public notice of:
 - 139 (i) titles or encumbrances to real property;
 - 140 (ii) restrictions on the use of real property;
 - 141 (iii) the capacity of persons to take or convey title to real property; or

- 142 (iv) tax status for real and personal property;
- 143 (h) records of the Department of Commerce that evidence incorporations, mergers,
144 name changes, and uniform commercial code filings;
- 145 (i) data on individuals that would otherwise be private under this chapter if the
146 individual who is the subject of the record has given the governmental entity written
147 permission to make the records available to the public;
- 148 (j) documentation of the compensation that a governmental entity pays to a contractor
149 or private provider;
- 150 (k) summary data;
- 151 (l) voter registration records, including an individual's voting history, except for those
152 parts of the record that are classified as private in Subsection 63G-2-302(1)(i);
- 153 (m) for an elected official, as defined in Section 11-47-102, a telephone number, if
154 available, and email address, if available, where that elected official may be reached as required
155 in Title 11, Chapter 47, Access to Elected Officials;
- 156 (n) for a school community council member, a telephone number, if available, and
157 email address, if available, where that elected official may be reached directly as required in
158 Section 53A-1a-108; [~~and~~]
- 159 (o) annual audited financial statements of the Utah Educational Savings Plan described
160 in Section 53B-8a-111[-]; and
- 161 (p) an initiative packet, as defined in Section 20A-7-101, and a referendum packet, as
162 defined in Section 20A-7-101, after the packet is submitted to a county clerk.
- 163 (3) The following records are normally public, but to the extent that a record is
164 expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b),
165 Section 63G-2-302, 63G-2-304, or 63G-2-305:
 - 166 (a) administrative staff manuals, instructions to staff, and statements of policy;
 - 167 (b) records documenting a contractor's or private provider's compliance with the terms
168 of a contract with a governmental entity;
 - 169 (c) records documenting the services provided by a contractor or a private provider to

170 the extent the records would be public if prepared by the governmental entity;

171 (d) contracts entered into by a governmental entity;

172 (e) any account, voucher, or contract that deals with the receipt or expenditure of funds
173 by a governmental entity;

174 (f) records relating to government assistance or incentives publicly disclosed,
175 contracted for, or given by a governmental entity, encouraging a person to expand or relocate a
176 business in Utah, except as provided in Subsection 63G-2-305(34);

177 (g) chronological logs and initial contact reports;

178 (h) correspondence by and with a governmental entity in which the governmental entity
179 determines or states an opinion upon the rights of the state, a political subdivision, the public,
180 or any person;

181 (i) empirical data contained in drafts if:

182 (i) the empirical data is not reasonably available to the requester elsewhere in similar
183 form; and

184 (ii) the governmental entity is given a reasonable opportunity to correct any errors or
185 make nonsubstantive changes before release;

186 (j) drafts that are circulated to anyone other than:

187 (i) a governmental entity;

188 (ii) a political subdivision;

189 (iii) a federal agency if the governmental entity and the federal agency are jointly
190 responsible for implementation of a program or project that has been legislatively approved;

191 (iv) a government-managed corporation; or

192 (v) a contractor or private provider;

193 (k) drafts that have never been finalized but were relied upon by the governmental
194 entity in carrying out action or policy;

195 (l) original data in a computer program if the governmental entity chooses not to
196 disclose the program;

197 (m) arrest warrants after issuance, except that, for good cause, a court may order

- 198 restricted access to arrest warrants prior to service;
- 199 (n) search warrants after execution and filing of the return, except that a court, for good
200 cause, may order restricted access to search warrants prior to trial;
- 201 (o) records that would disclose information relating to formal charges or disciplinary
202 actions against a past or present governmental entity employee if:
- 203 (i) the disciplinary action has been completed and all time periods for administrative
204 appeal have expired; and
- 205 (ii) the charges on which the disciplinary action was based were sustained;
- 206 (p) records maintained by the Division of Forestry, Fire, and State Lands, the School
207 and Institutional Trust Lands Administration, or the Division of Oil, Gas, and Mining that
208 evidence mineral production on government lands;
- 209 (q) final audit reports;
- 210 (r) occupational and professional licenses;
- 211 (s) business licenses; and
- 212 (t) a notice of violation, a notice of agency action under Section 63G-4-201, or similar
213 records used to initiate proceedings for discipline or sanctions against persons regulated by a
214 governmental entity, but not including records that initiate employee discipline.

215 (4) The list of public records in this section is not exhaustive and should not be used to
216 limit access to records.

217 Section 4. Section **63G-2-501** is amended to read:

218 **63G-2-501. State Records Committee created -- Membership -- Terms --**
219 **Vacancies -- Expenses.**

220 (1) There is created the State Records Committee within the Department of
221 Administrative Services to consist of the following seven individuals:

222 (a) an individual in the private sector whose profession requires ~~him~~ the individual to
223 create or manage records that if created by a governmental entity would be private or
224 controlled;

225 ~~[(b) the state auditor or the auditor's designee;]~~

226 ~~[(e)]~~ (b) the director of the Division of State History or the director's designee;
227 ~~[(d)]~~ (c) the governor or the governor's designee;
228 ~~[(e) one]~~ (d) two citizen ~~[member]~~ members;
229 ~~[(f)]~~ (e) one elected official representing political subdivisions; and
230 ~~[(g)]~~ (f) one individual representing the news media.

231 (2) The members specified in Subsections (1)(a), (d), (e), and (f)~~[, and (g)]~~ shall be
232 appointed by the governor with the consent of the Senate.

233 (3) (a) Except as required by Subsection (3)(b), as terms of current committee members
234 expire, the governor shall appoint each new member or reappointed member to a four-year
235 term.

236 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the
237 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
238 committee members are staggered so that approximately half of the committee is appointed
239 every two years.

240 (c) Each appointed member is eligible for reappointment for one additional term.

241 (4) When a vacancy occurs in the membership for any reason, the replacement shall be
242 appointed for the unexpired term.

243 (5) A member may not receive compensation or benefits for the member's service, but
244 may receive per diem and travel expenses in accordance with:

245 (a) Section 63A-3-106;

246 (b) Section 63A-3-107; and

247 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
248 63A-3-107.