

LEGISLATIVE REDISTRICTING AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Derek L. Kitchen

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions relating to redistricting.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ repeals and replaces provisions relating to the Utah Independent Redistricting Commission;
- ▶ describes the times and circumstances for redistricting;
- ▶ imposes redistricting standards and requirements on the Legislature and the commission;
- ▶ provides a severability clause;
- ▶ establishes the commission and provides for the commission membership, qualifications and terms of members, vacancies, compensation, and resources;
- ▶ addresses commission meetings and assessment of proposed redistricting plans;
- ▶ requires open and public meetings and addresses ex parte communications;
- ▶ requires public hearings throughout the state;
- ▶ establishes requirements and procedures for selecting redistricting plans;
- ▶ grants the chief justice of the Utah Supreme Court a role in selecting a redistricting plan if the commission fails to adopt a plan;
- ▶ provides for submission of the commission's redistricting plan to the Legislature;



- 28 ▶ requires the Legislature to enact the commission's plan, without amendment, or to
- 29 reject the commission's redistricting plan;
- 30 ▶ establishes requirements if the Legislature enacts its own redistricting plan;
- 31 ▶ establishes a right of action to challenge a redistricting plan enacted by the
- 32 Legislature;
- 33 ▶ provides for certain costs and attorney fees to be awarded to a prevailing plaintiff;
- 34 ▶ waives governmental immunity with respect to the award of costs and attorney fees;
- 35 and
- 36 ▶ makes the commission subject to the Government Records Access and Management
- 37 Act.

38 **Money Appropriated in this Bill:**

39 None

40 **Other Special Clauses:**

41 None

42 **Utah Code Sections Affected:**

43 AMENDS:

44 **63G-2-103**, as last amended by Laws of Utah 2021, Chapters 211 and 283

45 **63G-7-301**, as last amended by Laws of Utah 2020, Chapters 288, 338, and 365

46 ENACTS:

47 **20A-21-101**, Utah Code Annotated 1953

48 **20A-21-102**, Utah Code Annotated 1953

49 **20A-21-103**, Utah Code Annotated 1953

50 **20A-21-201**, Utah Code Annotated 1953

51 **20A-21-202**, Utah Code Annotated 1953

52 **20A-21-203**, Utah Code Annotated 1953

53 **20A-21-204**, Utah Code Annotated 1953

54 **20A-21-301**, Utah Code Annotated 1953

55 REPEALS:

56 **20A-20-101**, as enacted by Laws of Utah 2020, Chapter 288

57 **20A-20-102**, as last amended by Laws of Utah 2021, First Special Session, Chapter 5

58 **20A-20-103**, as enacted by Laws of Utah 2020, Chapter 288

- 59 [20A-20-201](#), as last amended by Laws of Utah 2021, Chapter 344
- 60 [20A-20-202](#), as enacted by Laws of Utah 2020, Chapter 288
- 61 [20A-20-203](#), as last amended by Laws of Utah 2021, Chapter 345
- 62 [20A-20-301](#), as last amended by Laws of Utah 2021, First Special Session, Chapter 5
- 63 [20A-20-302](#), as last amended by Laws of Utah 2021, Chapter 306
- 64 [20A-20-303](#), as last amended by Laws of Utah 2021, Chapter 306

65

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

67 Section 1. Section [20A-21-101](#) is enacted to read:

68 **CHAPTER 21. UTAH INDEPENDENT REDISTRICTING COMMISSION AND**
 69 **STANDARDS ACT**

70 **Part 1. General Provisions**

71 **20A-21-101. Permitted times and circumstances for redistricting.**

72 Division of the state into congressional, legislative, and other districts, and modification
 73 of existing divisions, is permitted only at the following times or under the following
 74 circumstances:

75 (1) no later than the first annual general legislative session after the Legislature's
 76 receipt of the results of a national decennial enumeration made by the authority of the United
 77 States;

78 (2) no later than the first annual general legislative session after a change in the number
 79 of congressional, legislative, or other districts resulting from an event other than a national
 80 decennial enumeration made by the authority of the United States;

81 (3) upon the issuance of a permanent injunction by a court of competent jurisdiction
 82 under Subsection [20A-21-301\(2\)](#) and as provided in Subsection [20A-21-301\(8\)](#);

83 (4) to conform with a final decision of a court of competent jurisdiction; or

84 (5) to make minor adjustments or technical corrections to district boundaries.

85 Section 2. Section [20A-21-102](#) is enacted to read:

86 **20A-21-102. Redistricting standards and requirements.**

87 (1) This section establishes redistricting standards and requirements applicable to the
 88 Legislature and to the Utah Independent Redistricting Commission.

89 (2) The Legislature and the commission shall abide by the following redistricting

90 standards to the greatest extent practicable and in the following order of priority:

91 (a) adhering to the Constitution of the United States and federal laws, such as the
92 Voting Rights Act, 52 U.S.C. Secs. 10101 through 10702, including, to the extent required,
93 achieving equal population among districts using the most recent national decennial
94 enumeration made by the authority of the United States;

95 (b) minimizing the division of municipalities and counties across multiple districts,
96 giving first priority to minimizing the division of municipalities and second priority to
97 minimizing the division of counties;

98 (c) creating districts that are geographically compact;

99 (d) creating districts that are contiguous and that allow for the ease of transportation
100 throughout the district;

101 (e) preserving traditional neighborhoods and local communities of interest;

102 (f) following natural and geographic features, boundaries, and barriers; and

103 (g) maximizing boundary agreement among different types of districts.

104 (3) The Legislature and the commission may not divide districts in a manner that
105 purposefully or unduly favors or disfavors any incumbent elected official, candidate, or
106 prospective candidate for elective office, or any political party.

107 (4) The Legislature and the commission shall use judicial standards and the best
108 available data and scientific and statistical methods, including measures of partisan symmetry,
109 to assess whether a proposed redistricting plan abides by and conforms to the redistricting
110 standards contained in this section, including the restrictions contained in Subsection (3).

111 (5) Partisan political data and information, such as partisan election results, voting
112 records, political party affiliation information, and residential addresses of incumbent elected
113 officials and candidates or prospective candidates for elective office, may not be considered by
114 the Legislature or by the commission, except as permitted under Subsection (4).

115 (6) The Legislature and the commission shall make computer software and information
116 and data concerning proposed redistricting plans reasonably available to the public so that the
117 public has a meaningful opportunity to review redistricting plans and to conduct the
118 assessments described in Subsection (4).

119 Section 3. Section **20A-21-103** is enacted to read:

120 **20A-21-103. Severability.**

- 121 (1) The provisions of this chapter are severable.
122 (2) If any word, phrase, sentence, or section of this chapter or the application of any
123 word, phrase, sentence, or section of this chapter to any person or circumstance is held invalid
124 by a final decision of a court of competent jurisdiction, the remainder of this chapter must be
125 given effect without the invalid word, phrase, sentence, section, or application.

126 Section 4. Section **20A-21-201** is enacted to read:

127 **Part 2. Utah Independent Redistricting Commission**

128 **20A-21-201. Utah Independent Redistricting Commission -- Selection of**
129 **commissioners -- Qualifications -- Term -- Vacancy -- Compensation -- Commission**
130 **resources.**

- 131 (1) This act creates the Utah Independent Redistricting Commission.
132 (2) The Utah Independent Redistricting Commission comprises seven commissioners
133 appointed as provided in this section.
134 (3) Each of the following appointing authorities shall appoint one commissioner:
135 (a) the governor, whose appointee shall serve as commission chair;
136 (b) the president of the Senate;
137 (c) the speaker of the House of Representatives;
138 (d) the leader of the largest minority political party in the Senate;
139 (e) the leader of the largest minority political party in the House of Representatives;
140 (f) the leadership of the majority political party in the Senate, including the president of
141 the Senate, jointly with the leadership of the same political party in the House of
142 Representatives and the speaker of the House of Representatives if a member of that political
143 party; and
144 (g) the leadership of the largest minority political party in the Senate jointly with the
145 leadership of the same political party in the House of Representatives and the speaker of the
146 House of Representatives if a member of that political party.
147 (4) The appointing authorities described in Subsection (3) shall appoint their
148 commissioners no later than 30 calendar days following:
149 (a) the receipt by the Legislature of a national decennial enumeration made by the
150 authority of the United States; or
151 (b) a change in the number of congressional, legislative, or other districts resulting

152 from an event other than a national decennial enumeration made by the authority of the United
153 States.

154 (5) Commissioners appointed under Subsections (3)(f) and (g), in addition to the
155 qualifications and conditions in Subsection (6), may not have at any time during the preceding
156 five years:

157 (a) been affiliated with any political party for the purposes of Section [20A-2-107](#);

158 (b) voted in any political party's regular primary election or any political party's
159 municipal primary election; or

160 (c) been a delegate to a political party convention.

161 (6) Each commissioner:

162 (a) must have been at all times an active voter, as defined in Subsection [20A-1-102\(1\)](#),
163 during the four years preceding appointment to the commission;

164 (b) must not have been at any time during the four years preceding appointment to the
165 commission, and may not be during their service as commissioner or for four years thereafter:

166 (i) a lobbyist or principal, as those terms are defined under Section [36-11-102](#);

167 (ii) a candidate for or holder of any elective office, including any local government
168 office;

169 (iii) a candidate for or holder of any office of a political party, excluding the office of
170 political party delegate, or the recipient of compensation in any amount from a political party,
171 political party committee, personal campaign committee, or any political action committee
172 affiliated with a political party or controlled by an elected official or candidate for elective
173 office, including any local government office;

174 (iv) appointed by the governor or the Legislature to any other public office; or

175 (v) employed by the Congress of the United States, the Legislature, or the holder of any
176 position that reports directly to an elected official or to any person appointed by the governor or
177 Legislature to any other public office.

178 (7) (a) Each commissioner shall file with the commission and with the governor a
179 signed statement certifying that the commissioner:

180 (i) meets and will continue to meet throughout their term as commissioner the
181 applicable qualifications contained in this section;

182 (ii) will comply with the standards, procedures, and requirements applicable to

183 redistricting contained in this chapter;

184 (iii) will faithfully discharge the commissioner's duties in an independent, honest,
185 transparent, and impartial manner; and

186 (iv) will not engage in any effort to purposefully or unduly favor or disfavor any
187 incumbent elected official, candidate or prospective candidate for elective office, or any
188 political party.

189 (b) The commission and the governor shall make available to the public the statements
190 required under Subsection (7)(a).

191 (8) (a) A commissioner's term lasts until a successor is appointed or until that
192 commissioner's death, resignation, or removal.

193 (b) A commissioner may resign at any time by providing written notice to the
194 commission and to the governor.

195 (c) A commissioner may be removed only by a majority vote of the speaker of the
196 House of Representatives and the leader of the largest minority political party in the House of
197 Representatives and the president of the Senate and leader of the largest minority political party
198 in the Senate, and may be removed only for failure to meet the qualifications of this section,
199 incapacity, or for other good cause, such as substantial neglect of duty or gross misconduct in
200 office.

201 (9) (a) The appointing authority that appointed a commissioner shall fill a vacancy
202 caused by the death, resignation, or removal of that commissioner within 21 calendar days after
203 the vacancy occurs.

204 (b) If the appointing authority at the time of the vacancy is of a different political party
205 than that of the appointing authority when the original appointment was made, then the
206 corresponding appointing authority of the same political party in the Senate, the House of
207 Representatives, or the leadership, as the case may be, as the appointing authority that made the
208 original appointment must make the appointment to fill the vacancy.

209 (10) If an appointing authority fails to appoint a commissioner or to fill a vacancy by
210 the deadlines provided in this section, then the chief justice of the Supreme Court of the state
211 of Utah shall appoint that commissioner within 14 calendar days after the failure to appoint or
212 fill a vacancy.

213 (11) (a) Commissioners may not receive compensation or benefits for their service, but

214 may receive per diem and travel expenses in accordance with:

215 (i) Section 63A-3-106;

216 (ii) Section 63A-3-107; and

217 (iii) rules of the Division of Finance under Sections 63A-3-106 and 63A-3-107.

218 (b) A commissioner may decline to receive per diem and travel expenses.

219 (12) (a) The Legislature shall appropriate adequate funds for the commission to carry
220 out its duties, and shall make available to the commission such personnel, facilities, equipment,
221 and other resources as the commission may reasonably request.

222 (b) The Office of Legislative Research and General Counsel shall provide the technical
223 staff, legal assistance, computer equipment, computer software, and other equipment and
224 resources to the commission that the commission reasonably requests.

225 (c) The commission has procurement and contracting authority, and upon a majority
226 vote, may procure the services of staff, legal counsel, consultants, and experts, and may acquire
227 the computers, data, software, and other equipment and resources that are necessary to carry
228 out its duties effectively.

229 Section 5. Section 20A-21-202 is enacted to read:

230 **20A-21-202. Commission code of conduct -- Quorum -- Action by commission --**
231 **Assessment of proposed redistricting plans -- Open and public meetings -- Public**
232 **hearings -- Ex parte communications.**

233 (1) The commission shall conduct its activities in an independent, honest, transparent,
234 and impartial manner, and each commissioner and member of the commission, including staff
235 and consultants employed or retained by the commission, shall act in a manner that reflects
236 creditably on the commission.

237 (2) The commission shall meet upon the request of a majority of commissioners.

238 (3) Attendance of a majority of commissioners at a meeting constitutes a quorum for
239 the conduct of commission business and the taking of official commission actions.

240 (4) The commission takes official actions by majority vote of commissioners at a
241 meeting at which a quorum is present, except as otherwise provided in this chapter.

242 (5) (a) The commission may consider any redistricting plan submitted to the
243 commission by any person or organization, including commissioners.

244 (b) The commission shall make available to each commissioner and to the public all

245 plans or elements of plans submitted to the commission or to any commissioner.

246 (6) Upon the affirmative vote of at least three commissioners, the commission shall
247 conduct the assessments described in Subsection 20A-21-103(4) of any redistricting plan being
248 considered by the commission or by the Legislature, and shall promptly make the assessments
249 available to the public.

250 (7) (a) The commission shall establish and maintain a website, or other equivalent
251 electronic platform, to disseminate information about the commission, including records of its
252 meetings and public hearings, proposed redistricting plans, and assessments of and reports on
253 redistricting plans, and to allow the public to view its meetings and public hearings in both live
254 and in archived form.

255 (b) The commission's website, or other equivalent electronic platform, must allow the
256 public to submit redistricting plans and comments on redistricting plans to the commission for
257 its consideration.

258 (8) The commission is subject to Title 52, Chapter 4, Open and Public Meetings Act,
259 Sections 52-4-101 through 52-4-305, and to Title 63G, Chapter 2, Government Records Access
260 and Management Act, Sections 63G-2-101 through 63G-2-804.

261 (9) (a) The commission shall, by majority vote, determine the number, locations, and
262 dates of the public hearings to be held by the commission, but the commission shall hold no
263 fewer than seven public hearings throughout the state in connection with each redistricting that
264 is permitted under Subsections 20A-21-102(1) and (2) as follows:

265 (i) one in the Bear River region - Box Elder, Cache, or Rich County;

266 (ii) one in the Southwest region - Beaver, Garfield, Iron, Kane, or Washington County;

267 (iii) one in the Mountain region - Summit, Utah, or Wasatch County;

268 (iv) one in the Central region - Juab, Millard, Piute, Sanpete, Sevier, or Wayne County;

269 (v) one in the Southeast region - Carbon, Emery, Grand, or San Juan County;

270 (vi) one in the Uintah Basin region - Daggett, Duchesne, or Uintah County; and

271 (vii) one in the Wasatch Front region - Davis, Morgan, Salt Lake, Tooele, or Weber
272 County.

273 (b) The commission shall hold at least two public hearings in a first or second class
274 county but not in the same county.

275 (10) Each public hearing must provide those in attendance a reasonable opportunity to

276 submit written and oral comments to the commission and to propose redistricting plans for the
277 commission's consideration.

278 (11) The commission must hold the public hearings required under Subsection (9) by:

279 (a) the earlier of the 120th calendar day after the Legislature's receipt of the results of a
280 national decennial enumeration made by the authority of the United States or August 31 of that
281 year; or

282 (b) no later than 120 calendar days after a change in the number of congressional,
283 legislative, or other districts that results from an event other than a national decennial
284 enumeration made by the authority of the United States.

285 (12) (a) A commissioner may not engage in any private communication with any
286 person other than other commissioners, commission personnel, including consultants retained
287 by the commission, and employees of the Office of Legislative Research and General Counsel,
288 that is material to any redistricting plan or element of a plan pending before the commission or
289 intended to be proposed for commission consideration, without making the communication, or
290 a detailed and accurate description of the communication including the names of all parties to
291 the communication and the plan or element of the plan, available to the commission and to the
292 public.

293 (b) A commissioner shall make the disclosure required by Subsection (12)(a) before
294 the redistricting plan or element of a plan is considered by the commission.

295 Section 6. Section **20A-21-203** is enacted to read:

296 **20A-21-203. Selection of recommended redistricting plan.**

297 (1) The commission shall prepare and, by the affirmative vote of at least five
298 commissioners, adopt at least one and as many as three redistricting plans that the commission
299 determines divide the state into congressional, legislative, or other districts in a manner that
300 satisfies the redistricting standards and requirements contained in this chapter as the
301 commission's recommended redistricting plan or plans no later than 30 calendar days following
302 completion of the public hearings required under Subsection [20A-21-202\(9\)](#).

303 (2) (a) If the commission fails to adopt a redistricting plan by the deadline identified in
304 Subsection (1), the commission shall submit no fewer than two redistricting plans to the chief
305 justice of the Supreme Court of the state of Utah.

306 (b) The chief justice of the Supreme Court of the state of Utah shall, as soon as

307 practicable, select from the submitted plans at least one and as many as three redistricting plans
308 that the chief justice determines divide the state into congressional, legislative, and other
309 districts in a manner that satisfies the redistricting standards and requirements contained in this
310 chapter as the commission's recommended redistricting plan or plans.

311 (c) Of the plans submitted by the commission to the chief justice of the Supreme Court
312 of the state of Utah under Subsection (2)(a), at least one plan must be supported by the
313 commissioner appointed under Subsection 20A-21-201(3)(f), and at least one plan must be
314 supported by the commissioner appointed under Subsection 20A-21-201(3)(g).

315 Section 7. Section 20A-21-204 is enacted to read:

316 **20A-21-204. Submission of commission's recommended redistricting plans to the**
317 **Legislature -- Consideration of redistricting plans by the Legislature -- Report required if**
318 **Legislature enacts other plan.**

319 (1) (a) The commission shall submit to the president of the Senate, the speaker of the
320 House of Representatives, and the director of the Office of Legislative Research and General
321 Counsel, and make available to the public, the redistricting plan or plans recommended under
322 Section 20A-21-203 and a detailed written report setting forth each plan's adherence to the
323 redistricting standards and requirements contained in this chapter.

324 (b) The commission shall make the submissions described in Subsection (1)(a), to the
325 extent practicable, not less than 10 calendar days before the Senate or the House of
326 Representatives votes on any redistricting plan permitted under Subsections 20A-21-102(1)
327 and (2).

328 (2) (a) The Legislature shall either enact without change or amendment, other than
329 technical corrections such as those authorized under Section 36-12-12, or reject the
330 commission's recommended redistricting plans submitted to the Legislature under Subsection
331 (1).

332 (b) The president of the Senate and the speaker of the House of Representatives may
333 direct legislative staff to prepare a legislative review note and a legislative fiscal note on the
334 commission's recommended redistricting plan or plans.

335 (3) The Legislature may not enact any redistricting plan permitted under Subsections
336 20A-21-102(1) and (2) until adequate time has been afforded to the commission and to the
337 chief justice of the Supreme Court of the state of Utah to satisfy their duties under this chapter,

338 including the consideration and assessment of redistricting plans, public hearings, and the
339 selection of one or more recommended redistricting plans.

340 (4) The Legislature may not enact a redistricting plan or modification of any
341 redistricting plan unless the plan or modification has been made available to the public by the
342 Legislature, including by making it available on the Legislature's website, or other equivalent
343 electronic platform, for a period of no less than 10 calendar days and in a manner and format
344 that allows the public to assess the plan for adherence to the redistricting standards and
345 requirements contained in this chapter and that allows the public to submit comments on the
346 plan to the Legislature.

347 (5) (a) If a redistricting plan other than a plan submitted to the Legislature under
348 Subsection (1) is enacted by the Legislature, then no later than seven calendar days after its
349 enactment the Legislature shall issue to the public a detailed written report setting forth the
350 reasons for rejecting the plan or plans submitted to the Legislature under Subsection (1) and a
351 detailed explanation of why the redistricting plan enacted by the Legislature better satisfies the
352 redistricting standards and requirements contained in this chapter.

353 (b) The commission may, by majority vote, issue public statements, assessments, and
354 reports in response to:

355 (i) any report by the Legislature described in Subsection (5)(a);

356 (ii) the Legislature's consideration or enactment of any redistricting plan, including any
357 plan submitted to the Legislature under Subsection (1); or

358 (iii) the Legislature's consideration or enactment of any modification to a redistricting
359 plan.

360 Section 8. Section **20A-21-301** is enacted to read:

361 **Part 3. Private Right of Action**

362 **20A-21-301. Right of action and injunctive relief.**

363 (1) Each person who resides or is domiciled in the state, or whose executive office or
364 principal place of business is located in the state, may bring an action in a court of competent
365 jurisdiction to obtain any of the relief available under Subsection (2).

366 (2) If a court of competent jurisdiction determines in any action brought under this
367 section that a redistricting plan enacted by the Legislature fails to abide by or conform to the
368 redistricting standards, procedures, and requirements set forth in this chapter, the court shall

369 issue a permanent injunction barring enforcement or implementation of the redistricting plan.
370 In addition, the court may issue a temporary restraining order or preliminary injunction that
371 temporarily stays enforcement or implementation of the redistricting plan at issue if the court
372 determines that:

373 (a) the plaintiff is likely to show by a preponderance of the evidence that a permanent
374 injunction under this Subsection (2) should issue; and

375 (b) issuing a temporary restraining order or preliminary injunction is in the public
376 interest.

377 (3) A plaintiff bringing an action under this section is not required to give or post a
378 bond, security, or collateral in connection with obtaining any relief under this section.

379 (4) In any action brought under this section, the court shall review or evaluate the
380 redistricting plan at issue de novo.

381 (5) If a plaintiff bringing an action under this section is successful in obtaining any
382 relief under Subsection (2), the court shall order the defendant in the action to promptly pay
383 reasonable compensation for actual, necessary services rendered by an attorney, consulting or
384 testifying expert, or other professional, or any corporation, association, or other entity or group
385 of other persons, employed or engaged by the plaintiff, and to promptly reimburse the attorney,
386 consulting or testifying expert, or other professional, or any corporation, association, or other
387 entity or group of other persons, employed or engaged by the plaintiff for actual, necessary
388 expenses. If there is more than one defendant in the action, each of the defendants is jointly and
389 severally liable for the compensation and expenses awarded by the court.

390 (6) In any action brought under this section, the court may order a plaintiff to pay
391 reasonable compensation for actual, necessary services rendered by an attorney, consulting or
392 testifying expert, or other professional, or any corporation, association, or other entity or group
393 of other persons, employed or engaged by a defendant, and to promptly reimburse the attorney,
394 consulting or testifying expert, or other professional, or any corporation, association, or other
395 entity or group of other persons, employed or engaged by a defendant for actual, necessary
396 expenses, only if the court determines that:

397 (a) the plaintiff brought the action for an improper purpose, such as to harass or to
398 cause unnecessary delay or needless increase in the cost of litigation;

399 (b) the plaintiff's claims, defenses, and other legal contentions are not warranted by

400 existing law or by a nonfrivolous argument for the extension, modification, or reversal of
401 existing law or the establishment of new law; or

402 (c) the plaintiff's allegations and other factual contentions do not have any evidentiary
403 support, or if specifically so identified, are not likely to have evidentiary support after a
404 reasonable opportunity for further investigation or discovery.

405 (7) Notwithstanding Title 63G, Chapter 7, Governmental Immunity Act of Utah, a
406 governmental entity named as a defendant in any action brought under this section is not
407 immune from such action or from payment of compensation or reimbursement of expenses
408 awarded by the court under Subsection (5).

409 (8) Upon the issuance of a permanent injunction under Subsection (2), the Legislature
410 may enact a new or alternative redistricting plan that abides by and conforms to the
411 redistricting standards, procedures, and requirements of this chapter.

412 Section 9. Section **63G-2-103** is amended to read:

413 **63G-2-103. Definitions.**

414 As used in this chapter:

415 (1) "Audit" means:

416 (a) a systematic examination of financial, management, program, and related records
417 for the purpose of determining the fair presentation of financial statements, adequacy of
418 internal controls, or compliance with laws and regulations; or

419 (b) a systematic examination of program procedures and operations for the purpose of
420 determining their effectiveness, economy, efficiency, and compliance with statutes and
421 regulations.

422 (2) "Chronological logs" mean the regular and customary summary records of law
423 enforcement agencies and other public safety agencies that show:

424 (a) the time and general nature of police, fire, and paramedic calls made to the agency;
425 and

426 (b) any arrests or jail bookings made by the agency.

427 (3) "Classification," "classify," and their derivative forms mean determining whether a
428 record series, record, or information within a record is public, private, controlled, protected, or
429 exempt from disclosure under Subsection **63G-2-201(3)(b)**.

430 (4) (a) "Computer program" means:

431 (i) a series of instructions or statements that permit the functioning of a computer
432 system in a manner designed to provide storage, retrieval, and manipulation of data from the
433 computer system; and

434 (ii) any associated documentation and source material that explain how to operate the
435 computer program.

436 (b) "Computer program" does not mean:

437 (i) the original data, including numbers, text, voice, graphics, and images;

438 (ii) analysis, compilation, and other manipulated forms of the original data produced by
439 use of the program; or

440 (iii) the mathematical or statistical formulas, excluding the underlying mathematical
441 algorithms contained in the program, that would be used if the manipulated forms of the
442 original data were to be produced manually.

443 (5) (a) "Contractor" means:

444 (i) any person who contracts with a governmental entity to provide goods or services
445 directly to a governmental entity; or

446 (ii) any private, nonprofit organization that receives funds from a governmental entity.

447 (b) "Contractor" does not mean a private provider.

448 (6) "Controlled record" means a record containing data on individuals that is controlled
449 as provided by Section [63G-2-304](#).

450 (7) "Designation," "designate," and their derivative forms mean indicating, based on a
451 governmental entity's familiarity with a record series or based on a governmental entity's
452 review of a reasonable sample of a record series, the primary classification that a majority of
453 records in a record series would be given if classified and the classification that other records
454 typically present in the record series would be given if classified.

455 (8) "Elected official" means each person elected to a state office, county office,
456 municipal office, school board or school district office, local district office, or special service
457 district office, but does not include judges.

458 (9) "Explosive" means a chemical compound, device, or mixture:

459 (a) commonly used or intended for the purpose of producing an explosion; and

460 (b) that contains oxidizing or combustive units or other ingredients in proportions,
461 quantities, or packing so that:

- 462 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the
463 compound or mixture may cause a sudden generation of highly heated gases; and
464 (ii) the resultant gaseous pressures are capable of:
465 (A) producing destructive effects on contiguous objects; or
466 (B) causing death or serious bodily injury.
- 467 (10) "Government audit agency" means any governmental entity that conducts an audit.
468 (11) (a) "Governmental entity" means:
469 (i) executive department agencies of the state, the offices of the governor, lieutenant
470 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,
471 the Board of Examiners, the National Guard, the Career Service Review Office, the State
472 Board of Education, the Utah Board of Higher Education, and the State Archives;
473 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal
474 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative
475 committees, except any political party, group, caucus, or rules or sifting committee of the
476 Legislature;
477 (iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar
478 administrative units in the judicial branch;
479 (iv) any state-funded institution of higher education or public education; or
480 (v) any political subdivision of the state, but, if a political subdivision has adopted an
481 ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this
482 chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or
483 as specified in any other section of this chapter that specifically refers to political subdivisions.
- 484 (b) "Governmental entity" also means:
485 (i) every office, agency, board, bureau, committee, department, advisory board, or
486 commission of an entity listed in Subsection (11)(a) that is funded or established by the
487 government to carry out the public's business;
488 (ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative
489 undertaking;
490 (iii) as defined in Section 11-13a-102, a governmental nonprofit corporation;
491 (iv) an association as defined in Section 53G-7-1101;
492 (v) the Utah Independent Redistricting Commission; [~~and~~]

493 (vi) a law enforcement agency, as defined in Section 53-1-102, that employs one or
494 more law enforcement officers, as defined in Section 53-13-103[-]; and

495 (vii) the Utah Independent Redistricting Commission.

496 (c) "Governmental entity" does not include the Utah Educational Savings Plan created
497 in Section 53B-8a-103.

498 (12) "Gross compensation" means every form of remuneration payable for a given
499 period to an individual for services provided including salaries, commissions, vacation pay,
500 severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any
501 similar benefit received from the individual's employer.

502 (13) "Individual" means a human being.

503 (14) (a) "Initial contact report" means an initial written or recorded report, however
504 titled, prepared by peace officers engaged in public patrol or response duties describing official
505 actions initially taken in response to either a public complaint about or the discovery of an
506 apparent violation of law, which report may describe:

507 (i) the date, time, location, and nature of the complaint, the incident, or offense;

508 (ii) names of victims;

509 (iii) the nature or general scope of the agency's initial actions taken in response to the
510 incident;

511 (iv) the general nature of any injuries or estimate of damages sustained in the incident;

512 (v) the name, address, and other identifying information about any person arrested or
513 charged in connection with the incident; or

514 (vi) the identity of the public safety personnel, except undercover personnel, or
515 prosecuting attorney involved in responding to the initial incident.

516 (b) Initial contact reports do not include follow-up or investigative reports prepared
517 after the initial contact report. However, if the information specified in Subsection (14)(a)
518 appears in follow-up or investigative reports, it may only be treated confidentially if it is
519 private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

520 (c) Initial contact reports do not include accident reports, as that term is described in
521 Title 41, Chapter 6a, Part 4, Accident Responsibilities.

522 (15) "Legislative body" means the Legislature.

523 (16) "Notice of compliance" means a statement confirming that a governmental entity

524 has complied with an order of the State Records Committee.

525 (17) "Person" means:

526 (a) an individual;

527 (b) a nonprofit or profit corporation;

528 (c) a partnership;

529 (d) a sole proprietorship;

530 (e) other type of business organization; or

531 (f) any combination acting in concert with one another.

532 (18) "Private provider" means any person who contracts with a governmental entity to
533 provide services directly to the public.

534 (19) "Private record" means a record containing data on individuals that is private as
535 provided by Section [63G-2-302](#).

536 (20) "Protected record" means a record that is classified protected as provided by
537 Section [63G-2-305](#).

538 (21) "Public record" means a record that is not private, controlled, or protected and that
539 is not exempt from disclosure as provided in Subsection [63G-2-201\(3\)\(b\)](#).

540 (22) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film,
541 card, tape, recording, electronic data, or other documentary material regardless of physical form
542 or characteristics:

543 (i) that is prepared, owned, received, or retained by a governmental entity or political
544 subdivision; and

545 (ii) where all of the information in the original is reproducible by photocopy or other
546 mechanical or electronic means.

547 (b) "Record" does not mean:

548 (i) a personal note or personal communication prepared or received by an employee or
549 officer of a governmental entity:

550 (A) in a capacity other than the employee's or officer's governmental capacity; or

551 (B) that is unrelated to the conduct of the public's business;

552 (ii) a temporary draft or similar material prepared for the originator's personal use or
553 prepared by the originator for the personal use of an individual for whom the originator is
554 working;

- 555 (iii) material that is legally owned by an individual in the individual's private capacity;
- 556 (iv) material to which access is limited by the laws of copyright or patent unless the
557 copyright or patent is owned by a governmental entity or political subdivision;
- 558 (v) proprietary software;
- 559 (vi) junk mail or a commercial publication received by a governmental entity or an
560 official or employee of a governmental entity;
- 561 (vii) a book that is cataloged, indexed, or inventoried and contained in the collections
562 of a library open to the public;
- 563 (viii) material that is cataloged, indexed, or inventoried and contained in the collections
564 of a library open to the public, regardless of physical form or characteristics of the material;
- 565 (ix) a daily calendar or other personal note prepared by the originator for the
566 originator's personal use or for the personal use of an individual for whom the originator is
567 working;
- 568 (x) a computer program that is developed or purchased by or for any governmental
569 entity for its own use;
- 570 (xi) a note or internal memorandum prepared as part of the deliberative process by:
- 571 (A) a member of the judiciary;
- 572 (B) an administrative law judge;
- 573 (C) a member of the Board of Pardons and Parole; or
- 574 (D) a member of any other body, other than an association or appeals panel as defined
575 in Section [53G-7-1101](#), charged by law with performing a quasi-judicial function;
- 576 (xii) a telephone number or similar code used to access a mobile communication
577 device that is used by an employee or officer of a governmental entity, provided that the
578 employee or officer of the governmental entity has designated at least one business telephone
579 number that is a public record as provided in Section [63G-2-301](#);
- 580 (xiii) information provided by the Public Employees' Benefit and Insurance Program,
581 created in Section [49-20-103](#), to a county to enable the county to calculate the amount to be
582 paid to a health care provider under Subsection [17-50-319\(2\)\(e\)\(ii\)](#);
- 583 (xiv) information that an owner of unimproved property provides to a local entity as
584 provided in Section [11-42-205](#);
- 585 (xv) a video or audio recording of an interview, or a transcript of the video or audio

586 recording, that is conducted at a Children's Justice Center established under Section 67-5b-102;

587 (xvi) child pornography, as defined by Section 76-5b-103;

588 (xvii) before final disposition of an ethics complaint occurs, a video or audio recording
589 of the closed portion of a meeting or hearing of:

590 (A) a Senate or House Ethics Committee;

591 (B) the Independent Legislative Ethics Commission;

592 (C) the Independent Executive Branch Ethics Commission, created in Section
593 63A-14-202; or

594 (D) the Political Subdivisions Ethics Review Commission established in Section
595 63A-15-201; or

596 (xviii) confidential communication described in Section 58-60-102, 58-61-102, or
597 58-61-702.

598 (23) "Record series" means a group of records that may be treated as a unit for
599 purposes of designation, description, management, or disposition.

600 (24) "Records officer" means the individual appointed by the chief administrative
601 officer of each governmental entity, or the political subdivision to work with state archives in
602 the care, maintenance, scheduling, designation, classification, disposal, and preservation of
603 records.

604 (25) "Schedule," "scheduling," and their derivative forms mean the process of
605 specifying the length of time each record series should be retained by a governmental entity for
606 administrative, legal, fiscal, or historical purposes and when each record series should be
607 transferred to the state archives or destroyed.

608 (26) "Sponsored research" means research, training, and other sponsored activities as
609 defined by the federal Executive Office of the President, Office of Management and Budget:

610 (a) conducted:

611 (i) by an institution within the state system of higher education defined in Section
612 53B-1-102; and

613 (ii) through an office responsible for sponsored projects or programs; and

614 (b) funded or otherwise supported by an external:

615 (i) person that is not created or controlled by the institution within the state system of
616 higher education; or

617 (ii) federal, state, or local governmental entity.

618 (27) "State archives" means the Division of Archives and Records Service created in
619 Section [63A-12-101](#).

620 (28) "State archivist" means the director of the state archives.

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

623 (30) "Summary data" means statistical records and compilations that contain data
624 derived from private, controlled, or protected information but that do not disclose private,
625 controlled, or protected information.

626 Section 10. Section [63G-7-301](#) is amended to read:

627 **[63G-7-301](#). Waivers of immunity.**

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

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

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

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

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

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

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

647 (d) subject to Subsection [63G-7-302](#)(1), as to any action brought under the authority of

648 Utah Constitution, Article I, Section 22, for the recovery of compensation from the
649 governmental entity when the governmental entity has taken or damaged private property for
650 public uses without just compensation;

651 (e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney
652 fees under Sections 63G-2-405 and 63G-2-802;

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

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

658 (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

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

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

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

666 (j) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from
667 a sexual battery, as provided in Section 76-9-702.1, committed:

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

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

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

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

674 (C) the public elementary or secondary school or charter school knew or in the exercise
675 of reasonable care should have known, at the time of the employee's hiring, to be a sex
676 offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex
677 and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a
678 background check under Section 53G-11-402[.]; and

679 (k) as to any action or suit brought under Section 20A-21-301 and as to any
680 compensation or expenses awarded under Subsection 20A-21-301(5).

681 (3) (a) As used in this Subsection (3):

682 (i) "Code of conduct" means a code of conduct that:

683 (A) is not less stringent than a model code of conduct, created by the State Board of
684 Education, establishing a professional standard of care for preventing the conduct described in
685 Subsection (3)(a)(i)(D);

686 (B) is adopted by the applicable local education governing body;

687 (C) regulates behavior of a school employee toward a student; and

688 (D) includes a prohibition against any sexual conduct between an employee and a
689 student and against the employee and student sharing any sexually explicit or lewd
690 communication, image, or photograph.

691 (ii) "Local education agency" means:

692 (A) a school district;

693 (B) a charter school; or

694 (C) the Utah Schools for the Deaf and the Blind.

695 (iii) "Local education governing board" means:

696 (A) for a school district, the local school board;

697 (B) for a charter school, the charter school governing board; or

698 (C) for the Utah Schools for the Deaf and the Blind, the state board.

699 (iv) "Public school" means a public elementary or secondary school.

700 (v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).

701 (vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering
702 the term "child" in that section to include an individual under age 18.

703 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a
704 claim against a local education agency for an injury resulting from a sexual battery or sexual
705 abuse committed against a student of a public school by a paid employee of the public school
706 who is criminally charged in connection with the sexual battery or sexual abuse, unless:

707 (i) at the time of the sexual battery or sexual abuse, the public school was subject to a
708 code of conduct; and

709 (ii) before the sexual battery or sexual abuse occurred, the public school had:

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

713 (4) (a) As used in this Subsection (4):

714 (i) "Higher education institution" means an institution included within the state system
715 of higher education under Section 53B-1-102.

716 (ii) "Policy governing behavior" means a policy adopted by a higher education
717 institution or the Utah Board of Higher Education that:

718 (A) establishes a professional standard of care for preventing the conduct described in
719 Subsections (4)(a)(ii)(C) and (D);

720 (B) regulates behavior of a special trust employee toward a subordinate student;

721 (C) includes a prohibition against any sexual conduct between a special trust employee
722 and a subordinate student; and

723 (D) includes a prohibition against a special trust employee and subordinate student
724 sharing any sexually explicit or lewd communication, image, or photograph.

725 (iii) "Sexual battery" means the offense described in Section 76-9-702.1.

726 (iv) "Special trust employee" means an employee of a higher education institution who
727 is in a position of special trust, as defined in Section 76-5-404.1, with a higher education
728 student.

729 (v) "Subordinate student" means a student:

730 (A) of a higher education institution; and

731 (B) whose educational opportunities could be adversely impacted by a special trust
732 employee.

733 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a
734 claim for an injury resulting from a sexual battery committed against a subordinate student by a
735 special trust employee, unless:

736 (i) the institution proves that the special trust employee's behavior that otherwise would
737 constitute a sexual battery was:

738 (A) with a subordinate student who was at least 18 years old at the time of the
739 behavior; and

740 (B) with the student's consent; or

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

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

745 Section 11. **Repealer.**

746 This bill repeals:

747 Section **20A-20-101**, **Title.**

748 Section **20A-20-102**, **Definitions.**

749 Section **20A-20-103**, **Review by interim committee.**

750 Section **20A-20-201**, **Utah Independent Redistricting Commission -- Creation --**
751 **Membership -- Term -- Quorum -- Action -- Meetings -- Staffing -- Website.**

752 Section **20A-20-202**, **Software and software services.**

753 Section **20A-20-203**, **Exemptions from and applicability of certain legal**
754 **requirements -- Risk management -- Code of ethics.**

755 Section **20A-20-301**, **Public hearings -- Private conversations.**

756 Section **20A-20-302**, **Selection of recommended maps -- Map requirements and**
757 **standards.**

758 Section **20A-20-303**, **Submission of maps to Legislature -- Consideration by**
759 **Legislature.**