

**Effective 7/1/2021**

**Title 63A. Utah Government Operations Code**

**Chapter 1  
Department of Government Operations**

**Part 1  
General Provisions**

**63A-1-101 Title.**

- (1) This title is known as the "Utah Government Operations Code."
- (2) This chapter is known as "Department of Government Operations."

Amended by Chapter 344, 2021 General Session

**63A-1-102 Purposes.**

The department shall:

- (1) provide specialized agency support services commonly needed;
- (2) provide effective, coordinated management of state government operations services;
- (3) serve the public interest by providing services in a cost-effective and efficient manner, eliminating unnecessary duplication;
- (4) enable administrators to respond effectively to technological improvements;
- (5) emphasize the service role of state administrative service agencies in meeting the service needs of user agencies;
- (6) use flexibility in meeting the service needs of state agencies; and
- (7) protect the public interest by ensuring the integrity of the fiscal accounting procedures and policies that govern the operation of agencies and institutions to assure that funds are expended properly and lawfully.

Amended by Chapter 344, 2021 General Session

**63A-1-103 Definitions.**

As used in this title:

- (1) "Agency" means a board, commission, institution, department, division, officer, council, office, committee, bureau, or other administrative unit of the state, including the agency head, agency employees, or other persons acting on behalf of or under the authority of the agency head, the Legislature, the courts, or the governor, but does not mean a political subdivision of the state, or any administrative unit of a political subdivision of the state.
- (2) "Department" means the Department of Government Operations.
- (3) "Executive director" means the executive director of the Department of Government Operations.

Amended by Chapter 344, 2021 General Session

**63A-1-104 Creation of department.**

There is created within state government the Department of Government Operations, to be administered by an executive director.

Amended by Chapter 344, 2021 General Session

**63A-1-105 Appointment of executive director -- Compensation.**

- (1) The governor shall:
  - (a) appoint the executive director with the advice and consent of the Senate; and
  - (b) establish the executive director's salary within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.
- (2) The executive director shall serve at the pleasure of the governor.

Amended by Chapter 352, 2020 General Session

**63A-1-105.5 Rulemaking authority of executive director.**

The executive director may, upon the recommendation of the appropriate division directors or the director of the Office of Administrative Rules, make rules consistent with state and federal law, and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing:

- (1) services of the department; and
- (2) the provision and use of services furnished to state agencies and institutions.

Amended by Chapter 169, 2022 General Session

**63A-1-106 Federal assistance -- Acceptance -- Approval of applications -- Expenditures necessary for eligibility.**

- (1) The executive director with the approval of the governor may accept on behalf of the state, and bind the state by that acceptance, any fund or service, advanced, offered, or contributed in whole or in part by the federal government for purposes consistent with the powers and duties of the department.
- (2) All applications for federal grants or other federal assistance in support of any program of the department are subject to the approval of the executive director.
- (3) If any executive or legislative provisions of the federal government require the expenditure of state funds as a condition to participation by the state in any fund, property, or service, the executive director, with the governor's approval, shall expend whatever funds are necessary out of the money provided by the Legislature for use and disbursement by the department.

Renumbered and Amended by Chapter 212, 1993 General Session

**63A-1-107 Administrative support to building ownership authority.**

The executive director shall provide administrative support and staff services to the State Building Ownership Authority.

Amended by Chapter 369, 2023 General Session

**63A-1-108 Powers and duties of other agencies assigned to executive director.**

Powers and duties assigned by other provisions of this title to the Division of Finance, the Division of Facilities Construction and Management, or other agencies or divisions of the department, and not specifically assigned by this chapter, shall be assigned to the executive director with the approval of the governor.

Amended by Chapter 369, 2023 General Session

**63A-1-109 Divisions of department -- Administration.**

- (1) The department is composed of:
  - (a) the following divisions:
    - (i) the Division of Purchasing and General Services, created in Section 63A-2-101;
    - (ii) the Division of Finance, created in Section 63A-3-101;
    - (iii) the Division of Facilities Construction and Management, created in Section 63A-5b-301;
    - (iv) the Division of Fleet Operations, created in Section 63A-9-201;
    - (v) the Division of Archives and Records Service, created in Section 63A-12-101;
    - (vi) the Division of Technology Services, created in Section 63A-16-103;
    - (vii) the Division of Human Resource Management, created in Section 63A-17-105; and
    - (viii) the Division of Risk Management, created in Section 63A-16-201; and
  - (b) the Office of Administrative Rules, created in Section 63G-3-401.
- (2) Each division described in Subsection (1)(a) shall be administered and managed by a division director.

Amended by Chapter 169, 2022 General Session

**63A-1-109.5 Department authority to operate a division or office as an internal service fund agency.**

Subject to Section 63A-1-114 and provisions governing internal service funds or internal service fund agencies under Title 63J, Chapter 1, Budgetary Procedures Act, the department may operate a division or office described in Section 63A-1-109 as an internal service fund agency.

Amended by Chapter 193, 2016 General Session

**63A-1-111 Service plans established by each division -- Contents -- Distribution.**

- (1) Each division and each office of the department shall formulate and establish service plans for each fiscal year.
- (2) The service plans shall describe:
  - (a) the services to be rendered to state agencies;
  - (b) the methods of providing those services;
  - (c) the standards of performance; and
  - (d) the performance measures used to gauge compliance with those standards.
- (3) Before the beginning of each fiscal year, the service plans shall be distributed to each state agency that uses the services provided by that division.

Amended by Chapter 193, 2016 General Session

Amended by Chapter 298, 2016 General Session

**63A-1-112 Certificates of participation -- Legislative approval required -- Definition -- Exception.**

- (1)
  - (a) Certificates of participation for either capital facilities or capital improvements may not be issued by the department, its subdivisions, or any other state agency after July 1, 1985, without prior legislative approval.

(b) Nothing in this section affects the rights and obligations surrounding certificates of participation that were issued prior to July 1, 1985.

(2)

(a) As used in this section, "certificate of participation" means an instrument that acts as evidence of the certificate holder's undivided interest in property being lease-purchased, the payment on which is subject to appropriation by the Legislature.

(b)

(i) As used in this Subsection (2)(b), "performance efficiency agreement" means the same as that term is defined in Section 63A-5b-1001.

(ii) "Certificate of participation" does not include a performance efficiency agreement.

Amended by Chapter 152, 2020 General Session

**63A-1-113 Agency exempt from title.**

The Utah Housing Corporation is exempt from this title.

Amended by Chapter 71, 2005 General Session

**63A-1-114 Rate committee -- Membership -- Duties.**

(1)

(a) There is created a rate committee consisting of the executive directors, commissioners, or superintendents of seven state agencies, which may include the State Board of Education, that use services and pay rates to one of the department internal service funds, or their designee, that the governor appoints for a two-year term.

(b) The department may not have a representative on the rate committee.

(c)

(i) The committee shall elect a chair from the committee's members.

(ii) Members of the committee who are state government employees and who do not receive salary, per diem, or expenses from their agency for their service on the committee shall receive no compensation, benefits, per diem, or expenses for the members' service on the committee.

(d) The department shall provide staff services to the committee.

(2)

(a) A division described in Section 63A-1-109 that manages an internal service fund shall submit to the committee a proposed rate schedule for services rendered by the division to an executive branch entity or an entity that subscribes to services rendered by the division.

(b) The committee shall:

(i) conduct meetings in accordance with Title 52, Chapter 4, Open and Public Meetings Act;

(ii) meet at least once each calendar year to:

(A) discuss the service performance of each internal service fund;

(B) review the proposed rate schedules;

(C) at the rate committee's discretion, approve, increase, or decrease the rate schedules described in Subsection (2)(b)(ii)(B); and

(D) discuss any prior or potential adjustments to the service level received by state agencies that pay rates to an internal service fund;

(iii) recommend a proposed rate schedule for each internal service fund to:

(A) the Governor's Office of Planning and Budget; and

- (B) each legislative appropriations subcommittee that, in accordance with Section 63J-1-410, approves the internal service fund agency's rates and budget; and
- (iv) review and approve, increase, or decrease an interim rate when an internal service fund agency begins a new service or introduces a new product between annual general sessions of the Legislature.
- (c) The committee may in accordance with Subsection 63J-1-410(4), decrease a rate that has been approved by the Legislature.

Amended by Chapter 169, 2022 General Session

**63A-1-116 Appointment of coordinator of resource stewardship -- Duties of the coordinator of resource stewardship.**

- (1) The executive director of the department shall appoint a state coordinator of resource stewardship and establish the coordinator of resource stewardship's salary.
- (2) The coordinator of resource stewardship shall report to the executive director or the executive director's designee.
- (3) The coordinator of resource stewardship shall:
  - (a) work with agencies to implement best practices and stewardship measures to improve air quality; and
  - (b) make an annual report on best practices and stewardship efforts to improve air quality to the Natural Resources, Agriculture, and Environment Interim Committee.
- (4) Each agency will retain absolute discretion whether or not to incorporate any of the practices or measures suggested by the coordinator.

Amended by Chapter 187, 2016 General Session

**63A-1-117 Training and certification requirements.**

The department shall ensure that any training or certification required of a public official or public employee, as those terms are defined in Section 63G-22-102, complies with Title 63G, Chapter 22, State Training and Certification Requirements, if the training or certification is required:

- (1) under this title;
- (2) by the department; or
- (3) by an agency or division within the department.

Enacted by Chapter 200, 2018 General Session

**Chapter 2**  
**Division of Purchasing and General Services**

**Part 1**  
**General Provisions**

**63A-2-101 Creation.**

There is created the Division of Purchasing and General Services within the department.

Amended by Chapter 344, 2021 General Session

**63A-2-101.5 Definitions.**

As used in this chapter:

- (1) "Division" means the Division of Purchasing and General Services created under Section 63A-2-101.
- (2) "Federal surplus property" means surplus property of the federal government of the United States.
- (3) "Information technology equipment" means equipment capable of downloading, accessing, manipulating, storing, or transferring electronic data, including:
  - (a) a computer;
  - (b) a smart phone, electronic tablet, personal digital assistant, or other portable electronic device;
  - (c) a digital copier or multifunction printer;
  - (d) a flash drive or other portable electronic data storage device;
  - (e) a server; and
  - (f) any other similar device.
- (4) "Person with a disability" means a person with a severe, chronic disability that:
  - (a) is attributable to a mental or physical impairment or a combination of mental and physical impairments; and
  - (b) is likely to continue indefinitely.
- (5) "Property act" means the Federal Property and Administrative Services Act of 1949, 40 U.S.C. Sec. 549.
- (6) "Purchasing director" means the director of the division appointed under Section 63A-2-102.
- (7) "Smart phone" means an electronic device that combines a cell phone with a hand-held computer, typically offering Internet access, data storage, and text and email capabilities.
- (8) "State agency" means any executive branch department, division, or other agency of the state.
- (9) "State surplus property":
  - (a) means state-owned property, whether acquired by purchase, seizure, donation, or otherwise:
    - (i) that is no longer being used by the state or no longer usable by the state;
    - (ii) that is out of date;
    - (iii) that is damaged and cannot be repaired or cannot be repaired at a cost that is less than the property's value;
    - (iv) whose useful life span has expired; or
    - (v) that the state agency possessing the property determines is not required to meet the needs or responsibilities of the state agency;
  - (b) includes:
    - (i) a motor vehicle;
    - (ii) equipment;
    - (iii) furniture;
    - (iv) information technology equipment;
    - (v) a supply; and
    - (vi) an aircraft; and
  - (c) does not include:
    - (i) real property;
    - (ii) an asset of the School and Institutional Trust Lands Administration, established in Section 53C-1-201;
    - (iii) a firearm or ammunition; or

- (iv) an office or household item made of aluminum, paper, plastic, cardboard, or other recyclable material, without any meaningful value except for recycling purposes.
- (10) "State surplus property contractor" means a person in the private sector under contract with the state to provide one or more services related to the division's program for the management and disposition of state surplus property.
- (11) "Surplus property program" means the program relating to state surplus property under Part 4, Surplus Property Service.
- (12) "Surplus property program administrator" means:
  - (a) the purchasing director, if the purchasing director administers the surplus property program; or
  - (b) the state surplus property contractor, if the state surplus property contractor administers the surplus property program.

Amended by Chapter 243, 2020 General Session

**63A-2-102 Director of division -- Appointment.**

- (1) The executive director shall appoint the director of the Division of Purchasing and General Services with the approval of the governor.
- (2) The purchasing director is also the state's chief procurement officer.

Amended by Chapter 98, 2015 General Session

**63A-2-103 Duties and authority of purchasing director -- State agency requirements -- Rate schedule.**

- (1) The purchasing director:
  - (a) shall operate, manage, and maintain:
    - (i) a central mailing service; and
    - (ii) an electronic central store system for procuring goods and services;
  - (b) shall operate, manage, and maintain the surplus property program; and
  - (c) may establish:
    - (i) a contract administration service, including contract performance surveys; and
    - (ii) other central services.
- (2)
  - (a) Each state agency shall:
    - (i) subscribe to all of the services described in Subsection (1)(a), unless the director delegates the director's authority to a state agency under Section 63A-2-104; and
    - (ii) complete contract performance surveys as requested by the purchasing director under Subsection (1)(c)(i).
  - (b) An institution of higher education, the State Board of Education, a school district, or a political subdivision of the state may subscribe to one or more of the services described in Subsection (1)(a).
- (3)
  - (a) The purchasing director shall:
    - (i) prescribe a schedule of rates to be charged for all services provided by the division after the purchasing director:
      - (A) submits the proposed rates for services provided by the division's internal service fund to the Rate Committee established in Section 63A-1-114; and
      - (B) obtains the approval of the Legislature, as required by Section 63J-1-410;

- (ii) ensure that the rates are approximately equal to the cost of providing the services; and
  - (iii) annually conduct a market analysis of rates.
- (b) A market analysis under Subsection (3)(a)(iii) shall include a comparison of the division's rates with the rates of other public or private sector providers if comparable services and rates are reasonably available.

Amended by Chapter 73, 2023 General Session

**63A-2-104 Delegation of general services to departments or agencies -- Writing required -- Contents -- Termination.**

- (1) The purchasing director, with the approval of the executive director, may delegate, in writing, the purchasing director's authority to perform or control any general services function to another state agency by contract or other means authorized by law, if:
- (a) in the judgment of the executive director, the state agency has requested the authority; and
  - (b) the state agency has the necessary resources and skills to perform or control the functions.
- (2) The purchasing director may delegate the purchasing director's authority only when the delegation would result in net cost savings or improved service delivery to the state as a whole.
- (3) The written delegation shall contain:
- (a) a precise definition of each function to be delegated;
  - (b) a clear description of the standards to be met in performing each function delegated;
  - (c) a provision for periodic administrative audits by the department; and
  - (d) a date on which the agreement shall terminate if not previously terminated or renewed.
- (4) An agreement to delegate functions to a state agency may be terminated by the department if the results of an administrative audit conducted by the department reveal lack of compliance with the terms of the agreement.

Amended by Chapter 98, 2015 General Session

**63A-2-105 Director to approve certain purchases.**

- (1) A state agency that intends to purchase any mail-related equipment or copy machine shall submit a purchase request to the purchasing director.
- (2) The purchasing director shall review a request under Subsection (1) to ensure that:
- (a) the authority to perform those functions has been appropriately delegated to the state agency under this part;
  - (b) the equipment meets proper specifications; and
  - (c) the benefits from the state agency's purchase of the equipment outweigh the benefits of having the same functions performed by the division.

Amended by Chapter 98, 2015 General Session

**63A-2-106 Background checks for employees.**

- (1) As used in this section, "bureau" means the Bureau of Criminal Identification created in Section 53-10-201.
- (2) Beginning July 1, 2018, the division shall require all applicants for the following positions to submit to a fingerprint-based local, regional, and national criminal history background check and ongoing monitoring as a condition of employment:
- (a) assistant directors;
  - (b) contract analysts; and



- (c) purchasing agents.
- (3) Each applicant for a position listed in Subsection (2) shall provide a completed fingerprint card to the division upon request.
- (4) The division shall require that an individual required to submit to a background check under Subsection (3) provide a signed waiver on a form provided by the division that meets the requirements of Subsection 53-10-108(4).
- (5) For a noncriminal justice background search and registration in accordance with Subsection 53-10-108(13), the division shall submit to the bureau:
  - (a) the applicant's personal identifying information and fingerprints for a criminal history search of applicable local, regional, and national databases; and
  - (b) a request for all information received as a result of the local, regional, and nationwide background check.
- (6) The division is responsible for the payment of all fees required by Subsection 53-10-108(15) and any fees required to be submitted to the Federal Bureau of Investigation by the bureau.
- (7) The division may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:
  - (a) determine how the division will assess the employment status of an individual upon receipt of background information; and
  - (b) identify the appropriate privacy risk mitigation strategy to be used in accordance with Subsection 53-10-108(13)(b).

Enacted by Chapter 427, 2018 General Session

## **Part 4 Surplus Property Service**

### **63A-2-401 State agencies required to participate in surplus property program -- Declaring property to be state surplus property -- Division authority.**

- (1) Except as otherwise provided in this part, a state agency shall dispose of and acquire state surplus property by participating in the surplus property program.
- (2) A state agency may declare property that the state agency owns to be state surplus property by making a written determination that the property is state surplus property.
- (3) The division shall determine the appropriate method for disposing of state surplus property.
- (4) The division may:
  - (a) establish facilities to store state surplus property at locations throughout the state; and
  - (b) after consultation with the state agency requesting the sale of state surplus property, establish the selling price for the state surplus property.
- (5) As provided in Title 63J, Chapter 1, Budgetary Procedures Act, the division may transfer proceeds generated by the sale of state surplus property to the state agency requesting the sale, reduced by a rate approved in accordance with Subsection 63A-2-103(3) to pay the division's costs of administering the surplus property program.
- (6) By following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules establishing a surplus property program that meets the requirements of this chapter.

Amended by Chapter 169, 2022 General Session

**63A-2-404 Acquisition of federal surplus property -- Powers and duties -- Advisory boards and committees -- Expenditures and contracts -- Clearinghouse of information -- Reports.**

- (1) The division may:
  - (a) acquire from the United States under and in conformance with the property act any federal surplus property under the control of any department or agency of the United States that is usable and necessary for any purposes authorized by federal law;
  - (b) warehouse federal surplus property if it is not real property; and
  - (c) distribute federal surplus property within this state to:
    - (i) tax-supported medical institutions, hospitals, clinics, and health centers;
    - (ii) school systems, schools, colleges, and universities;
    - (iii) other nonprofit medical institutions, hospitals, clinics, health centers, schools, colleges, and universities that are exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code of 1954;
    - (iv) civil defense organizations;
    - (v) political subdivisions; and
    - (vi) any other types of institutions or activities that are eligible to acquire the federal surplus property under federal law.
- (2) The division may:
  - (a) receive applications from eligible health and educational institutions for the acquisition of federal surplus real property;
  - (b) investigate the applications;
  - (c) obtain opinions about those applications from the appropriate health or educational authorities of this state;
  - (d) make recommendations about the need of the applicant for the property, the merits of the applicant's proposed use of the property, and the suitability of the property for those purposes; and
  - (e) otherwise assist in the processing of those applications for acquisition of real and related personal property of the United States under the property act.
- (3) The division may appoint advisory boards or committees.
- (4) If required by law or regulation of the United States in connection with the disposition of surplus real property and the receipt, warehousing, and distribution of surplus personal property received by the surplus property program from the United States, the surplus property program administrator may:
  - (a) make certifications, take action, and make expenditures;
  - (b) enter into contracts, agreements, and undertakings for and in the name of the state including cooperative agreements with the federal agencies providing for use by and exchange between them of the property, facilities, personnel, and services of each by the other;
  - (c) require reports; and
  - (d) make investigations.
- (5) The division shall act as the clearinghouse of information for public and private nonprofit institutions, organizations, and agencies eligible to acquire federal surplus real property to:
  - (a) locate both real and personal property available for acquisition from the United States;
  - (b) ascertain the terms and conditions under which that property may be obtained;
  - (c) receive requests from those institutions, organizations, and agencies and transmit to them all available information in reference to that property; and
  - (d) aid and assist those institutions, organizations, and agencies in every way possible in those acquisitions or transactions.

- (6) The division shall:
- (a) cooperate with the departments or agencies of the United States;
  - (b) file a state plan of operation;
  - (c) operate according to that plan;
  - (d) take the actions necessary to meet the minimum standards prescribed by the property act;
  - (e) make any reports required by the United States or any of its departments or agencies; and
  - (f) comply with the laws of the United States and the regulations of any of the departments or agencies of the United States governing the allocation of, transfer of, use of, or accounting for any property donated to the state.

Amended by Chapter 488, 2019 General Session

**63A-2-408 Authority of state or local subdivision to receive property -- Revocation of authority of officer.**

- (1) Notwithstanding any other provision of law, the governing board or the executive director of any state department, instrumentality, or agency that is not a state agency, or the legislative body of any city, county, school district, or other political subdivision may by order or resolution give any officer or employee the authority to:
- (a) secure the transfer of state surplus property or federal surplus property through the division under the property act; and
  - (b) obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of those transfers.
- (2) The authority conferred upon any officer or employee by an order or resolution remains in effect until:
- (a) the order or resolution is revoked; and
  - (b) the division has received written notice of the revocation.

Amended by Chapter 98, 2015 General Session

**63A-2-409 Disposal of certain surplus property.**

This part does not apply to disposition by:

- (1) the legislative branch of surplus property that is information technology equipment, if the Legislative Management Committee, by rule, establishes its own policy for disposition, by the legislative branch, of surplus property that is information technology equipment; or
- (2) the Department of Transportation of surplus personal property that was acquired as part of a transaction or legal action by the Department of Transportation acquiring real property for a state transportation purpose.

Amended by Chapter 98, 2015 General Session

**63A-2-411 Disposal of state surplus property with minimal value.**

- (1) As used in this section, "item of minimal value" means an item of property that:
- (a)
    - (i) had an initial purchase price of less than \$100; and
    - (ii) does not appreciate in value; or
  - (b) the surplus property program administrator determines to be worth less than \$100.

- (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules that permit a state agency to dispose of an item of minimal value that the state agency has declared to be state surplus property as provided in Section 63A-2-401.
- (3) Property of a state agency is presumed to be an item of minimal value if the property is not purchased after the surplus property program administrator offers the property for sale to the public at a price above \$100.

Amended by Chapter 488, 2019 General Session

## **Part 5**

### **Educational Interpretation and Translation Services Procurement Advisory Council**

#### **63A-2-501 Definitions.**

As used in this part:

- (1) "Advisory council" means the Educational Interpretation and Translation Services Procurement Advisory Council established in Section 63A-2-502.
- (2) "Contract" means a contract entered into by the division for interpretation or translation services in accordance with Section 63A-2-502.
- (3) "Local education agency" or "LEA" means the same as that term is defined in Section 53E-1-102.
- (4) "State board" means the State Board of Education.

Enacted by Chapter 354, 2022 General Session

#### **63A-2-502 Educational Interpretation and Translation Services Procurement Advisory Council.**

- (1) There is established the Educational Interpretation and Translation Services Procurement Advisory Council to provide advice to the purchasing director regarding the language-access needs of LEAs, students learning English, and the families of students learning English.
- (2) The advisory council shall consist of the following members:
  - (a) the purchasing director or the director's designee;
  - (b) an individual representing the state board, appointed by the state superintendent of public instruction;
  - (c) the purchasing director for the state board or the director's designee;
  - (d) an individual representing the Division of Multicultural Affairs created in Section 9-21-201, appointed by the executive director of the Department of Cultural and Community Engagement; and
  - (e) appointed by the cochairs:
    - (i) one or more employees of the state board who manage or administer services or programs for a student learning English and the student's parents;
    - (ii) an administrator from an LEA with a high density of students learning English;
    - (iii) an administrator from an LEA with a low density of students learning English;
    - (iv) a teacher, counselor, or other licensed LEA staff, from a school with a high density of students learning English;
    - (v) a teacher, counselor, or other licensed LEA staff, from a school with a low density of students learning English;

- (vi) an individual who works to assist students learning English or minority students navigate school and community resources, such as a refugee liaison;
  - (vii) an LEA procurement agent;
  - (viii) an individual representing a community organization that directly serves parents and their children learning English; and
  - (ix) a parent who is a person learning English and also the parent of a student learning English who is enrolled in an LEA.
- (3)
- (a) The purchasing director and the individual representing the state board, as described in Subsection (2)(b), shall serve as cochairs for the advisory council.
  - (b) Each advisory council member shall serve until a successor is duly appointed.
- (4) The division shall provide staff support to facilitate the function of the council.
- (5)
- (a) A member of the advisory council may not receive compensation or benefits for the council member's service.
  - (b) An advisory council member may receive per diem and travel expenses in accordance with:
    - (i) Section 63A-3-106;
    - (ii) Section 63A-3-107; and
    - (iii) rules made by the Division of Finance in accordance with Sections 63A-3-106 and 63A-3-107.
- (6)
- (a) Before the commencement of each school year, the state board shall collect and provide to the advisory council the following information for each LEA:
    - (i) a list of preferred languages of:
      - (A) students learning English; and
      - (B) parents and families of the students described in Subsection (6)(a)(i)(A); and
    - (ii) the frequency by which each language of a student learning English is preferred.
  - (b) Before the commencement of each school year after July 1, 2024, the state board shall, for each LEA, collect and provide to the advisory council the list of preferred methods of communication and frequency by which each method is preferred by parents and the parents' children learning English.
- (7)
- (a) Before the commencement of each school year, the advisory council shall advise the purchasing director on:
    - (i) the needs of the LEAs for interpretation and translation services, as described in Subsection (6);
    - (ii) the appropriate points of contact at the state board and each LEA that should receive information regarding the availability and use of procured interpretation and translation contracts; and
    - (iii) the form, manner, and content of information that is to be disseminated to the state board, each LEA, and LEA administrators and principals, regarding the availability and use of procured interpretation and translation contracts.
  - (b) The advisory council shall include in the information described in Subsection (7)(a)(iii) the following information:
    - (i) a notice of available contracts;
    - (ii) the language and types of services offered under each contract;
    - (iii) the requisite procedures for accessing the services stipulated within the contracts;

- (iv) a list of additional translation and interpretation materials, including posters or flyers, provided through a contract;
  - (v) an opportunity to provide feedback on contracts, including contact information for the division purchasing agent;
  - (vi) the estimated and actual cost to each LEA for use of interpretation and translation services; and
  - (vii) the availability of alternative procurement mechanisms that are independent of the division and available contracts.
- (8) The advisory council shall report to the Education Interim Committee no later than November 1 each year on the existing use and efficacy of all contracts.

Enacted by Chapter 354, 2022 General Session

### **Chapter 3 Division of Finance**

#### **Part 1 General Provisions**

##### **63A-3-101 Creation.**

There is created within the department the Division of Finance, to be administered by a director.

Renumbered and Amended by Chapter 212, 1993 General Session

##### **63A-3-102 Director of division -- Appointment.**

- (1) The executive director shall appoint the director of the Division of Finance with the approval of the governor.
- (2) The director of the Division of Finance shall serve at the pleasure of the executive director.
- (3) The director of the Division of Finance is the state's chief fiscal officer and the state's accounting officer.

Enacted by Chapter 212, 1993 General Session

##### **63A-3-103 Duties of director of division -- Application to institutions of higher education.**

- (1) The director of the Division of Finance shall:
  - (a) define fiscal procedures relating to approval and allocation of funds;
  - (b) provide for the accounting control of funds;
  - (c) promulgate rules that:
    - (i) establish procedures for maintaining detailed records of all types of leases;
    - (ii) account for all types of leases in accordance with generally accepted accounting principles;
    - (iii) require the performance of a lease with an option to purchase study by state agencies prior to any lease with an option to purchase acquisition of capital equipment; and
    - (iv) require that the completed lease with an option to purchase study be approved by the director of the Division of Finance;

- (d) if the department operates the Division of Finance as an internal service fund agency in accordance with Section 63A-1-109.5, submit to the Rate Committee established in Section 63A-1-114:
    - (i) the proposed rate and fee schedule as required by Section 63A-1-114; and
    - (ii) other information or analysis requested by the Rate Committee;
  - (e) oversee the Office of State Debt Collection;
  - (f) publish the state's current constitutional debt limit on the public finance website established by the state auditor in accordance with Section 67-3-12; and
  - (g) prescribe other fiscal functions required by law or under the constitutional authority of the governor to transact all executive business for the state.
- (2)
- (a) Institutions of higher education are subject to the provisions of Title 63A, Chapter 3, Part 1, General Provisions, and Title 63A, Chapter 3, Part 2, Accounting System, only to the extent expressly authorized or required by the Utah Board of Higher Education under Title 53B, State System of Higher Education.
  - (b) Institutions of higher education shall submit financial data for the past fiscal year conforming to generally accepted accounting principles to the director of the Division of Finance.
- (3) The Division of Finance shall prepare financial statements and other reports in accordance with legal requirements and generally accepted accounting principles for the state auditor's examination and certification:
- (a) not later than 60 days after a request from the state auditor; and
  - (b) at the end of each fiscal year.

Amended by Chapter 84, 2021 General Session

**63A-3-104 Appropriation for contingency purposes -- Procedure for allotment -- Legislative intent.**

- (1)
- (a) The Legislature shall determine the amount to be appropriated for contingency purposes, as well as the limits on the amount of any one allotment or total allotments to any one agency.
  - (b) In advance of making any such allotment, the governor shall notify the Legislature through the Office of the Legislative Fiscal Analyst, of his or her intent to do so, of the amount to be allotted, and the justification for the allotment.
- (2) It is the intent of the Legislature that such transfers be made only for unforeseeable emergencies, and allotments shall not be made to correct poor budgetary practices or for purposes having no existing appropriation or authorization.

Amended by Chapter 298, 2016 General Session

**63A-3-105 Securities deposited with state treasurer -- Release.**

- (1) The director of the Division of Finance shall collect and deposit with the state treasurer all stocks, evidences of indebtedness, bonds, and securities of every kind and nature belonging to the state or any of its departments.
- (2) The state treasurer shall keep a complete record of the items deposited under Subsection (1) and credit each to the proper fund or account. The treasurer shall release the items only upon the order of the director.

Renumbered and Amended by Chapter 212, 1993 General Session

**63A-3-106 Per diem rates for board members.**

- (1) As used in this section and Section 63A-3-107:
  - (a) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.
  - (b) "Board member" means a person appointed or designated by statute to serve on a board.
  - (c) "Executive branch" means an agency within the executive branch of state government.
  - (d)
    - (i) "Governmental entity" has the same meaning, except as provided in Subsection (1)(d)(ii), as provided under Section 63G-2-103.
    - (ii) "Governmental entity" does not include an association as defined in Section 53G-7-1101.
  - (e) "Higher education" means a state institution of higher education, as defined under Section 53B-1-102.
  - (f) "Officer" means a person who is elected or appointed to an office or position within a governmental entity.
  - (g) "Official meeting" means a meeting of a board that is called in accordance with statute.
- (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and subject to approval by the executive director, the director of the Division of Finance shall make rules establishing per diem rates to defray subsistence costs for a board member's attendance at an official meeting.
- (3) Unless otherwise provided by statute, a per diem rate established under Subsection (2) is applicable to a board member who serves:
  - (a) within the executive branch, except as provided under Subsection (3)(b);
  - (b) within higher education, unless higher education pays the costs of the per diem;
  - (c) on a board that is:
    - (i) not included under Subsection (3)(a) or (b); and
    - (ii) created by a statute that adopts the per diem rates by reference to:
      - (A) this section; and
      - (B) the rule authorized by this section; and
  - (d) within a government entity that is not included under Subsection (3)(a), if the government entity adopts the per diem rates by reference to:
    - (i) this section; or
    - (ii) the rule establishing the per diem rates.
- (4)
  - (a) Unless otherwise provided by statute, a board member who is not a legislator may receive per diem under this section and travel expenses under Section 63A-3-107 if the per diem and travel expenses are incurred by the board member for attendance at an official meeting.
  - (b) Notwithstanding Subsection (4)(a), a board member may not receive per diem or travel expenses under this Subsection (4) if the board member is being paid by a governmental entity while performing the board member's service on the board.
- (5) A board member may decline to receive per diem for the board member's service.
- (6) Compensation and expenses of a board member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Amended by Chapter 415, 2018 General Session

**63A-3-107 Travel expenses of board members and state officers and employees.**



- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and subject to approval by the executive director, the director of the Division of Finance shall make rules governing in-state and out-of-state travel expenses.
- (2) Unless otherwise provided by statute, a travel expense rule established under Subsection (1) is applicable to:
  - (a) a board member, an officer, or employee of the executive branch, except as provided under Subsection (2)(b);
  - (b) a board member, an officer, or employee of higher education, unless higher education pays the costs of the travel expenses;
  - (c) a board member who:
    - (i) is not included under Subsection (2)(a) or (b); and
    - (ii) serves on a board created by a statute that adopts the travel expense rates by reference to:
      - (A) this section; and
      - (B) the rule authorized by this section; and
  - (d) a government entity that is not included under Subsection (2)(a), if the government entity adopts the travel expense provisions by reference to:
    - (i) this section; or
    - (ii) the rule establishing the travel expense provisions.
- (3) The Division of Finance shall make the travel expense rules on the basis of:
  - (a) a mileage allowance; and
  - (b) reimbursement for other travel expenses incurred.
- (4) The travel expense rules may specify an exception to a travel expense rule or allow the director of the Division of Finance to make an exception to a travel expense rule, when justified by the executive director of the executive branch agency or department, to meet special circumstances encountered in official attendance at a conference, convention, meeting, or other official business, as determined by the director of the Division of Finance.
- (5) An officer or employee of the executive branch may not incur obligations for travel outside the state without the advance approval of the executive director or a designee of the executive director of an executive branch department or agency.
- (6) A board member may decline to receive travel expenses for the board member's service.
- (7) Compensation and expenses of a board member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Amended by Chapter 387, 2014 General Session

**63A-3-109 Contribution dependent accounts -- Annual report.**

- (1) As used in this section:
  - (a)
    - (i) "Contribution" means a voluntary donation of money or other valuable property to a state fund or account.
    - (ii) "Contribution" does not include:
      - (A) a fee or tax levied by a state entity; or
      - (B) a voluntary donation made under Title 41, Chapter 1a, Motor Vehicle Act or Title 59, Chapter 10, Part 13, Individual Income Tax Contribution Act.
  - (b)
    - (i) "Contribution dependent account" means a state fund or account that:
      - (A) receives at least 50% of the fund's or account's revenue from contributions; and

- (B) is not intended to be used to directly provide services exclusively to a person who makes a contribution to the fund or account.
- (ii) "Contribution dependent account" does not include a fiduciary fund as defined in Section 51-5-4.
- (2) The Division of Finance shall annually prepare a report that:
  - (a) lists each contribution dependent account that did not receive at least \$30,000 in contributions during at least one of the three fiscal years before the day on which the report is compiled; and
  - (b) recommends that the Legislature close each contribution dependent account listed in the report.
- (3) The Division of Finance shall present the report described in Subsection (2) to the Executive Appropriations Committee by November 30 of each year.

Amended by Chapter 451, 2022 General Session

**63A-3-110 Personal use expenditures for state officers and employees.**

- (1) As used in this section:
  - (a) "Employee" means a person who is not an elected or appointed officer and who is employed on a full- or part-time basis by a governmental entity.
  - (b) "Governmental entity" means:
    - (i) an executive branch agency of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the State Board of Education, and the Utah Board of Higher Education;
    - (ii) the Office of the Legislative Auditor General, the Office of the Legislative Fiscal Analyst, the Office of Legislative Research and General Counsel, the Legislature, and legislative committees;
    - (iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar administrative units in the judicial branch; or
    - (iv) independent state entities created under Title 63H, Independent State Entities.
  - (c) "Officer" means a person who is elected or appointed to an office or position within a governmental entity.
  - (d)
    - (i) "Personal use expenditure" means an expenditure made without the authority of law that:
      - (A) is not directly related to the performance of an activity as a state officer or employee;
      - (B) primarily furthers a personal interest of a state officer or employee or a state officer's or employee's family, friend, or associate; and
      - (C) would constitute taxable income under federal law.
    - (ii) "Personal use expenditure" does not include:
      - (A) a de minimis or incidental expenditure; or
      - (B) a state vehicle or a monthly stipend for a vehicle that an officer or employee uses to travel to and from the officer or employee's official duties, including a minimal allowance for a detour as provided by the state.
  - (e) "Public funds" means the same as that term is defined in Section 51-7-3.
- (2) A state officer or employee may not:
  - (a) use public funds for a personal use expenditure; or
  - (b) incur indebtedness or liability on behalf of, or payable by, a governmental entity for a personal use expenditure.

- (3) If the Division of Finance or the responsible governmental entity determines that a state officer or employee has intentionally made a personal use expenditure in violation of Subsection (2), the governmental entity shall:
  - (a) require the state officer or employee to deposit the amount of the personal use expenditure into the fund or account from which:
    - (i) the personal use expenditure was disbursed; or
    - (ii) payment for the indebtedness or liability for a personal use expenditure was disbursed;
  - (b) require the state officer or employee to remit an administrative penalty in an amount equal to 50% of the personal use expenditure to the Division of Finance; and
  - (c) deposit the money received under Subsection (3)(b) into the General Fund.
- (4)
  - (a) Any state officer or employee who has been found by a governmental entity to have made a personal use expenditure in violation of Subsection (2) may appeal the finding of the governmental entity.
  - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Division of Finance shall make rules regarding an appeal process for an appeal made under Subsection (4)(a), including the designation of an appeal authority.
- (5)
  - (a) Subject to Subsection (5)(b), the Division of Finance may withhold all or a portion of the wages of a state officer or employee who has violated Subsection (2) until the requirements of Subsection (3) have been met.
  - (b) If the state officer or employee has requested an appeal under Subsection (4), the Division of Finance may only withhold the wages of the officer or employee after the appeal authority described in Subsection (4)(b) has confirmed that the officer or employee violated Subsection (2).
- (6) Nothing in this chapter immunizes a state officer or employee from or precludes any criminal prosecution or civil or employment action for an unlawful personal use expenditure.
- (7) A state officer or employee who is convicted of misusing public money or public property under Section 76-8-402 may not disburse public funds or access public accounts.

Amended by Chapter 360, 2020 General Session

Amended by Chapter 365, 2020 General Session

**63A-3-112 Digital user asset collection.**

- (1) As used in this section:
  - (a) "Agency" means a state government entity that receives payments for services or fees and is eligible to enter into a contract for payment services with the division.
  - (b) "Agency payment" means a payment that is due directly to an agency and that the agency collects either directly or through a third-party payment processor with whom the division has a contract.
  - (c) "Digital asset" means a representation of economic, proprietary, or access rights that is stored in a computer readable format.
  - (d) "Digital security" means a digital asset which constitutes a security, as that term is defined in Section 70A-8-101.
  - (e)
    - (i) "Digital user asset" means a digital asset that is used or bought primarily for consumptive, personal, or household purposes.
    - (ii) "Digital user asset" includes an open blockchain token.

- (iii) "Digital user asset" does not include a digital security.
  - (f) "Participating agency" means an agency that meets the division's requirements to accept payments made through a service provider with whom the division has a contract.
  - (g) "Political subdivision" means the same as that term is defined in Section 63G-7-102.
  - (h) "Political subdivision payment" means a payment that is due directly to a political subdivision and that the political subdivision collects either directly or through a third-party payment processor with whom the political subdivision has a contract.
  - (i) "Service provider" means a person with demonstrated experience exchanging digital user assets for legal tender.
- (2) The division shall contract with a service provider to provide a service to process an agency payment for a participating agency by:
- (a) taking the payment in the form of a digital user asset; and
  - (b) converting the digital user asset into legal tender to pay the agency payment.
- (3)
- (a) When contracting with a service provider to provide the service described in Subsection (2), the division has discretion to choose a service provider that can only provide the exchange service for a limited class or type of digital user asset.
  - (b) The division may contract with more than one service provider to provide the service described in Subsection (2).
  - (c) Nothing in this section shall be interpreted to require the division to provide the service described in Subsection (2) for all types of digital user assets.
- (4)
- (a) The person paying the agency payment bears responsibility for any costs the service provider charges for the service provider's service.
  - (b) The division may collect a fee established in accordance with the procedures and requirements of Section 63J-1-504 to cover the costs to the division of providing the service described in Subsection (2).
- (5) The division shall contract to provide the service described in Subsection (2) on or before January 1, 2023.
- (6) The division shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to:
- (a) establish standards that a person must meet to be eligible to enter into a contract as a service provider; and
  - (b) establish requirements an agency must meet to be a participating agency.
- (7) A political subdivision may enter into an agreement with the division for the division to contract with a service provider to, on behalf of the political subdivision:
- (a) provide a service to collect a political subdivision payment in the form of a digital user asset; and
  - (b) convert the digital user asset into legal tender to pay the political subdivision payment.
- (8) Nothing in this section shall be interpreted to impose liability upon the person paying the agency payment or a participating agency for a change in value of the digital user asset after the moment of payment to the service provider.

Enacted by Chapter 405, 2022 General Session

## Part 2

## Accounting System

### **63A-3-201 Appointment of accounting and other officers and employees by director of the Division of Finance -- Delegation of powers and duties by director -- Background checks.**

- (1) With the approval of the executive director, the director of the Division of Finance shall appoint an accounting officer and other administrative officers that are necessary to efficiently and economically perform the functions of the Division of Finance.
- (2) The director of the Division of Finance may:
  - (a) organize the division and employ other assistants to discharge the functions of the division;
  - (b) delegate to assistants, officers, and employees any of the powers and duties of the office subject to his or her control and subject to any conditions he may prescribe; and
  - (c) delegate the powers and duties of the office only by written order filed with the lieutenant governor.
- (3)
  - (a) As used in this Subsection (3):
    - (i) "Public employee" means a person employed by a state agency.
    - (ii) "Public funds" means money, funds, and accounts, regardless of the source from which the money, funds, and accounts are derived, that are owned, held, or administered by a state agency.
    - (iii) "Public funds position" means employment with a state agency that requires:
      - (A) physical or electronic access to public funds;
      - (B) performing internal control functions or accounting;
      - (C) creating reports on public funds; or
      - (D) using, operating, or accessing state systems that account for or help account for public funds.
    - (iv) "State agency" means:
      - (A) an executive branch agency; or
      - (B) a state educational institution with the exception of an institution defined in Subsection 53B-1-102(1).
  - (b) The Division of Finance may require that a public employee who applies for or holds a public funds position:
    - (i) submit a fingerprint card in a form acceptable to the division;
    - (ii) consent to a criminal background check by:
      - (A) the Federal Bureau of Investigation;
      - (B) the Utah Bureau of Criminal Identification; or
      - (C) another agency of any state that performs criminal background checks; or
    - (iii) consent to a credit history report, subject to the requirements of the Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 et seq.
  - (c) The Bureau of Criminal Identification shall provide all the results from the state, regional, and nationwide criminal history background checks to the division.
  - (d) The Division of Finance may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to implement this section.

Amended by Chapter 169, 2022 General Session

### **63A-3-202 Comprehensive state accounting system -- Approval of agency accounting systems -- Cost accounting systems required.**

- (1) The director of the Division of Finance shall establish a comprehensive state accounting system.
- (2) Officers, departments, agencies, and institutions of Utah may create and maintain accounting systems only with the approval of the director.
- (3) The director may, with the approval of the executive director, require any department or institution to install and maintain a cost accounting system that will disclose the unit cost of material or service produced or performed by a department.

Renumbered and Amended by Chapter 212, 1993 General Session

**63A-3-203 Accounting control over state departments and agencies -- Prescription and approval of financial forms and accounting systems.**

- (1) The director of the Division of Finance shall:
  - (a) exercise accounting control over all state departments and agencies except institutions of higher education; and
  - (b) prescribe the manner and method of certifying that funds are available and adequate to meet all contracts and obligations.
- (2) The director shall audit all claims against the state for which an appropriation is made.
- (3)
  - (a) The director shall prescribe:
    - (i) all forms of requisitions, receipts, vouchers, bills, or claims to be used by all state departments and agencies; and
    - (ii) all forms to be used by the division.
  - (b) Before approving the forms in Subsection (3)(a), the director shall obtain approval from the state auditor that the forms will adequately facilitate the post-audit of public accounts.
- (4) Before implementation by any state agency, the director of the Division of Finance shall review and approve any accounting system developed by a state agency.

Amended by Chapter 169, 2022 General Session

**63A-3-204 Financial control system -- Financial reports as to state funds -- Information required of executive directors of state departments.**

- (1) The director of the Division of Finance shall:
  - (a) maintain a financial control system according to generally accepted accounting principles;
  - (b) record the constituent elements of the General Fund and of each special fund in proper relationship to each other; and
  - (c) keep all accounts in balance.
- (2) The director of the Division of Finance shall prepare and submit to the governor and to the Legislature, when requested, reports showing:
  - (a) the condition of the General Fund and each special fund of the state;
  - (b) the available cash resources of the General Fund and each special fund of the state;
  - (c) as to each fund:
    - (i) the estimated revenue and anticipated time of collection;
    - (ii) the current encumbrances, future obligations, and estimated date they accrue;
    - (iii) appropriations;
    - (iv) obligations;
    - (v) monthly allotments;
    - (vi) unencumbered allotments; and

- (vii) reserves and surpluses;
  - (d) the capital assets and liability accounts of the state; and
  - (e) the valuation account of all other state property.
- (3) The executive director of each department of state government and all institutions of higher education shall submit statements containing the information and data necessary to enable the director of the Division of Finance to submit to the governor the reports required by Subsection (2).

Renumbered and Amended by Chapter 212, 1993 General Session

**63A-3-205 Revolving loan funds -- Standards and procedures.**

- (1) As used in this section, "revolving loan fund" means:
- (a) the Water Resources Conservation and Development Fund, created in Section 73-10-24;
  - (b) the Water Resources Construction Fund, created in Section 73-10-8;
  - (c) the Water Resources Cities Water Loan Fund, created in Section 73-10-22;
  - (d) the Clean Fuel Conversion Funds, created in Title 19, Chapter 1, Part 4, Clean Fuels and Emission Reduction Technology Program Act;
  - (e) the Water Development Security Fund and its subaccounts, created in Section 73-10c-5;
  - (f) the Agriculture Resource Development Fund, created in Section 4-18-106;
  - (g) the Utah Rural Rehabilitation Fund, created in Section 4-19-105;
  - (h) the Permanent Community Impact Fund, created in Section 35A-8-303;
  - (i) the Petroleum Storage Tank Fund, created in Section 19-6-409;
  - (j) the Uintah Basin Revitalization Fund, created in Section 35A-8-1602;
  - (k) the Navajo Revitalization Fund, created in Section 35A-8-1704; and
  - (l) the Energy Efficiency Fund, created in Section 11-45-201.
- (2) The division shall for each revolving loan fund make rules establishing standards and procedures governing:
- (a) payment schedules and due dates;
  - (b) interest rate effective dates;
  - (c) loan documentation requirements; and
  - (d) interest rate calculation requirements.

Amended by Chapter 100, 2022 General Session

Amended by Chapter 451, 2022 General Session

**Part 3**  
**Accounts Receivable Collection**

**63A-3-301 Definitions.**

As used in this part:

- (1) "Account receivable" or "receivable" means any amount due the state or any other governmental entity within the state as a result of a judgment, citation, tax, or administrative order, or for which materials or services have been provided but for which payment has not been received by the servicing unit.
- (2) "Debtor" means a party that owes, or is alleged to owe, an account receivable.
- (3) "Division" means the Division of Finance, created in Section 63A-3-101.

- (4) "Local agency" means a nonprofit entity organized by participating political subdivisions to act on behalf of the participating political subdivisions with respect to the office's efforts to collect accounts receivable of participating political subdivisions through administrative offsets.
- (5) "Mail" means United States Postal Service first class mail to the intended recipient's last known address.
- (6) "Participating political subdivision" means a political subdivision that has entered into an agreement with a local agency authorizing the local agency to act on behalf of the political subdivision with respect to the office's efforts to collect accounts receivable of the political subdivision through administrative offsets.
- (7) "Political subdivision" means the same as that term is defined in Section 63G-7-102.

Amended by Chapter 297, 2020 General Session

**63A-3-302 Unpaid accounts receivable -- Political subdivision agreement with local agency.**

- (1)
  - (a) Except as provided in Subsections (1)(b) and (c), if any account receivable at any point has been unpaid for 90 days or more, any agency or other authority of the state, or any political subdivision responsible for collection of the account may proceed under this part to collect the delinquent amount.
  - (b) A governmental entity within the state that is a health care provider may not proceed under this part when the account receivable is for a medical material or service and the debtor:
    - (i) has made a payment arrangement with the health care provider; and
    - (ii) is current on payments under the payment arrangement.
  - (c) The state, a governmental entity within the state, or a local agency acting on behalf of a political subdivision within the state may proceed under this part on an account receivable that is for a property tax imposed under Title 59, Chapter 2, Property Tax Act, only if the account receivable is three or more years delinquent.
- (2)
  - (a) A political subdivision may enter into an agreement with a local agency under which the local agency, for a reasonable fee that the political subdivision and local agency agree upon, prepares and submits the political subdivision's accounts receivable for collection as provided in this part.
  - (b) Notwithstanding an agreement under Subsection (2)(a), a participating political subdivision shall:
    - (i) establish an agreement with the division for submitting delinquent accounts receivable under this part; and
    - (ii) with respect to the accounts receivable that the participating political subdivision submits through a local agency for collection under this part:
      - (A) receive and respond to an administrative hearing requested under Section 63A-3-305; and
      - (B) administer an adjudicative proceeding required under Section 63A-3-306.

Amended by Chapter 261, 2022 General Session

**63A-3-303 Notice to debtor -- Contents -- Joint filers.**

- (1) When the state or any governmental entity executes, or intends to execute, on a lien created by Section 63A-3-307, the state or entity to which the receivable is owed shall send a notice by mail to the debtor at the debtor's last-known address.



- (2) The notice required by Subsection (1) shall contain:
  - (a) the date and amount of the receivable;
  - (b) a demand for immediate payment of the amount;
  - (c) a statement of the right of the debtor to file a written response to the notice, to request a hearing within 21 days of the date of the notice, to be represented at the hearing, and to appeal any decision of the hearing examiner;
  - (d) the time within which a written response must be received from the debtor;
  - (e) a statement notifying the debtor that the state may obtain an order and execute upon income tax overpayments or refunds of the debtor if:
    - (i) the debtor fails to timely respond to the notice; or
    - (ii) a hearing is held and the hearing officer decides against the debtor; and
  - (f) the address to which the debtor may send a written request for a hearing.
- (3) Notwithstanding Subsection (1), if the Office of State Debt Collection has agreed to collect a receivable, the Office of State Debt Collection may send the notice required by Subsection (1) instead of the entity to which the receivable is owed.
- (4) Unless otherwise prohibited by law, the notice required by this section shall also be sent to any individuals that are joint filers with a debtor of an affected tax filing, if the state agency or other governmental entity attempting to levy a debtor's tax overpayment or refund is aware of the joint filer.

Amended by Chapter 84, 2019 General Session

**63A-3-304 Effect of nonpayment or failure to respond.**

If a written request for a hearing, or payment of delinquent receivable, is not received by the state or other governmental entity within 21 days from the date of the notice required by Section 63A-3-303, the debtor is in default and the state or other governmental entity may:

- (1) levy the debtor's income tax overpayment or refund up to the amount of the receivable, plus interest, penalties, and collection costs allowed by law; and
- (2) collect the balance, including as provided in Section 63A-3-307.

Amended by Chapter 84, 2019 General Session

**63A-3-305 Hearing requested -- Notice to debtor.**

- (1) If a written response is received by the state or other governmental entity within 21 days from the date of the notice required by Section 63A-3-303 and a hearing is requested in the written response, the state or other governmental entity shall:
  - (a) set a hearing date within 28 days of the receipt of the response; and
  - (b) mail written notice of the hearing to the debtor at least 14 days before the date of the hearing.
- (2) Notwithstanding Subsection (1), the state or other governmental entity is not required to set a hearing if the state or governmental entity releases its lien.

Amended by Chapter 84, 2019 General Session

**63A-3-306 Hearing examiner -- Procedures -- Adjudicative proceedings.**

- (1)
  - (a) A hearing requested under this part shall be held before a hearing examiner designated by the state or other governmental entity setting the hearing.

- (b) The hearing examiner may not be an officer or employee of the entity in state government responsible for collecting or administering the account.
- (2) The state or other governmental entity shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.
- (3) If a hearing examiner determines a receivable is owed, in whole or in part:
  - (a) the state or other governmental entity may levy the debtor's income tax overpayment or refund up to the amount of the receivable determined to be owed, plus interest, penalties, and collection costs allowed by law and collect the balance, including as provided in Section 63A-3-307; and
  - (b) the state or other governmental entity may charge the debtor reasonable, actual collection costs for amounts charged by the hearing examiner for the debtor's hearing.

Amended by Chapter 84, 2019 General Session

**63A-3-307 Liens.**

- (1) The following shall constitute a lien in the amount of the receivable plus interest, penalties, and collection costs allowed by law against any state income tax overpayment or refund due or to become due the debtor:
  - (a) a judgment, citation, tax, or administrative order issued by any agency, court, or other authority of the state, or by any political subdivision; or
  - (b) an amount, that has at any point been unpaid for 90 days or more, due the state or other governmental entity for which materials or services have been provided but for which payment has not been received by the servicing unit.
- (2) The lien created by this section shall, for the purposes of Section 59-10-529 only, be considered a judgment.

Amended by Chapter 297, 2020 General Session

**63A-3-308 Judicial review -- Effect on lien.**

- (1) Agency and judicial review of decisions from hearings conducted under this part are subject to review in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (2) The state or other governmental entity may retain in its possession a debtor's tax overpayment or refund while a decision from a hearing conducted under this part is being reviewed by an agency, court, or other authority of the state pursuant to Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 84, 2019 General Session

**63A-3-310 Rules for implementing part.**

The division may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the implementation of this part, including rules for the conduct of hearings, injured spouse claims, and appointment of hearing examiners.

Amended by Chapter 169, 2022 General Session

**Part 4**

## Infrastructure Revolving Loan Funds

### 63A-3-401.5 Definitions.

As used in this part:

- (1) "Borrower" means a person who borrows money from an infrastructure fund for an infrastructure project.
- (2) "Independent political subdivision" means:
  - (a) the Utah Inland Port Authority created in Section 11-58-201;
  - (b) the Point of the Mountain State Land Authority created in Section 11-59-201; or
  - (c) the Military Installation Development Authority created in Section 63H-1-201.
- (3) "Infrastructure fund" means a fund created in Subsection 63A-3-402(1).
- (4) "Infrastructure loan" means a loan of infrastructure fund money to finance an infrastructure project.
- (5) "Infrastructure project" means a project to acquire, construct, reconstruct, rehabilitate, equip, or improve public infrastructure and improvements:
  - (a) within a project area; or
  - (b) outside a project area, if the respective loan approval body determines by resolution that the public infrastructure and improvements are of benefit to the project area.
- (6) "Inland port" means the same as that term is defined in Section 11-58-102.
- (7) "Inland port fund" means the infrastructure fund created in Subsection 63A-3-402(1)(a).
- (8) "Military development fund" means the infrastructure fund created in Subsection 63A-3-402(1)(c).
- (9) "Point of the mountain fund" means the infrastructure fund created in Subsection 63A-3-402(1)(b).
- (10) "Project area" means:
  - (a) the same as that term is defined in Section 11-58-102, for purposes of an infrastructure loan from the inland port fund;
  - (b) the point of the mountain state land, as defined in Section 11-59-102, for purposes of an infrastructure loan from the point of the mountain fund; and
  - (c) the same as that term is defined in Section 63H-1-102, for purposes of an infrastructure loan from the military development fund.
- (11) "Property tax revenue" means:
  - (a) property tax differential, as defined in Section 11-58-102, for purposes of an infrastructure loan from the inland port fund; or
  - (b) property tax allocation, as defined in Section 63H-1-102, for purposes of an infrastructure loan from the military development fund.
- (12) "Public infrastructure and improvements":
  - (a) means the same as that term is defined in Section 11-58-102, for purposes of an infrastructure loan from the inland port fund;
  - (b) means publicly owned infrastructure and improvements, as defined in Section 11-59-102, for purposes of an infrastructure loan from the point of the mountain fund; and
  - (c) means the same as that term is defined in Section 63H-1-102, for purposes of an infrastructure loan from the military development fund.
- (13) "Respective loan approval body" means:
  - (a) the board created in Section 11-58-301, for purposes of an infrastructure loan from the inland port fund;

- (b) the board created in Section 11-59-301, for purposes of an infrastructure loan from the point of the mountain fund; and
- (c) the committee created in Section 63H-1-104, for purposes of an infrastructure loan from the military development fund.

Amended by Chapter 259, 2023 General Session

**63A-3-402 Infrastructure funds established -- Purpose of funds -- Use of money in funds.**

- (1) There are created, as enterprise revolving loan funds:
  - (a) the inland port infrastructure revolving loan fund;
  - (b) the point of the mountain infrastructure revolving loan fund; and
  - (c) the military development infrastructure revolving loan fund.
- (2) The purpose of each infrastructure fund is to provide funding, through infrastructure loans, for infrastructure projects undertaken by a borrower.
- (3)
  - (a) Money in an infrastructure fund may be used only to provide loans for infrastructure projects.
  - (b) The division may not loan money in an infrastructure fund without the approval of:
    - (i) the respective loan approval body; and
    - (ii) the Executive Appropriations Committee of the Legislature, for a loan from the inland port fund or the point of the mountain fund.

Amended by Chapter 259, 2023 General Session

**63A-3-403 Money in infrastructure funds.**

- (1) Money in each of the infrastructure funds shall be kept separate and accounted for separately from money in the other infrastructure funds.
- (2) Each infrastructure fund includes money:
  - (a) appropriated to that fund by the Legislature;
  - (b) transferred to the fund from the State Infrastructure Bank Fund created in Section 72-2-202, if applicable;
  - (c) from federal, state, or other public grants or contributions;
  - (d) that an independent political subdivision transfers to the fund from other money available to the independent political subdivision;
  - (e) contributed or granted to the infrastructure fund from a private source; and
  - (f) collected from repayments of loans of infrastructure fund money.
- (3) In addition to money identified in Subsection (2), the military development fund includes money repaid under the terms of a loan agreement, as described in Section 63A-3-404, executed on or after October 1, 2021, from a loan under Subsection 63B-27-101(3)(a)(i).
- (4)
  - (a) Each infrastructure fund shall earn interest.
  - (b) All interest earned on infrastructure fund money shall be deposited into the respective infrastructure fund and included in the money of the infrastructure fund available to be loaned.
- (5) The state treasurer shall invest infrastructure fund money as provided in Title 51, Chapter 7, State Money Management Act.

Amended by Chapter 463, 2022 General Session

**63A-3-404 Loan agreement.**

- (1)
  - (a) A borrower that borrows money from an infrastructure fund shall enter into a loan agreement with the division for repayment of the money.
  - (b)
    - (i) A loan agreement under Subsection (1)(a) shall be secured by:
      - (A) bonds, notes, or another evidence of indebtedness validly issued under state law; or
      - (B) revenue generated from an infrastructure project.
    - (ii) The security provided under Subsection (1)(b)(i) may include the borrower's pledge of some or all of a revenue source that the borrower controls.
  - (c) The respective loan approval body may determine that property tax revenue or revenue from the infrastructure project for which the infrastructure loan is obtained is sufficient security for an infrastructure loan.
- (2) An infrastructure loan shall bear interest at a rate not to exceed .5% above bond market interest rates available to the state.
- (3)
  - (a) Subject to Subsection (3)(b), the respective loan approval body shall determine the length of term of an infrastructure loan.
  - (b) If the security for an infrastructure loan is property tax revenue, the repayment terms of the infrastructure loan agreement shall allow sufficient time for the property tax revenue to generate sufficient money to cover payments under the infrastructure loan.
- (4) An infrastructure loan agreement may provide for a portion of the loan proceeds to be applied to a reserve fund to secure repayment of the infrastructure loan.
- (5)
  - (a) If a borrower fails to comply with the terms of an infrastructure loan agreement, the division may:
    - (i) seek any legal or equitable remedy to obtain:
      - (A) compliance with the agreement; or
      - (B) the payment of damages; and
    - (ii) request a state agency with money due to the borrower to withhold payment of the money to the borrower and instead to pay the money to the division to pay any amount due under the infrastructure loan agreement.
  - (b) A state agency that receives a request from the division under Subsection (5)(a)(ii) shall pay to the division the money due to the borrower to the extent of the amount due under the infrastructure loan agreement.
- (6) Upon approval from the respective loan approval body the division shall loan money from an infrastructure fund according to the terms established by the respective loan approval body.
- (7)
  - (a) The division shall administer and enforce an infrastructure loan according to the terms of the infrastructure loan agreement.
  - (b)
    - (i) Beginning May 5, 2021, the division shall assume responsibility from the State Infrastructure Bank Fund for servicing the loan under Subsection 63B-27-101(3)(a)(i).
    - (ii) Payments due on or after October 1, 2021, under the loan under Subsection 63B-27-101(3)(a)(i) shall be made to the division rather than to the State Infrastructure Bank Fund, to be deposited into the military development fund.
    - (iii) Notwithstanding Subsection (7)(b)(ii) and upon receipt of each debt service payment, the division shall deposit an amount equal to interest payments due on the bond described in

Subsection 63B-27-101(3)(a)(i) into the Transportation Investment Fund of 2005 created in Section 72-2-124.

Amended by Chapter 237, 2022 General Session  
Amended by Chapter 463, 2022 General Session

## **Part 5**

### **Office of State Debt Collection**

#### **63A-3-501 Definitions.**

As used in this part:

- (1)
  - (a) "Accounts receivable" or "receivables" means any amount due to a state agency from an entity for which payment has not been received by the state agency that is servicing the debt.
  - (b) "Accounts receivable" includes:
    - (i) unpaid fees, licenses, taxes, loans, overpayments, fines, forfeitures, surcharges, costs, contracts, interest, penalties, third-party claims, sale of goods, sale of services, claims, and damages;
    - (ii) a civil accounts receivable; and
    - (iii) a civil judgment of restitution.
  - (c) "Accounts receivable" does not include a criminal accounts receivable.
- (2) "Administrative offset" means:
  - (a) a reduction of an individual's tax refund or other payments due to the individual to reduce or eliminate accounts receivable that the individual owes to a state agency; and
  - (b) a reduction of an entity's tax refund or other payments due to the entity to reduce or eliminate accounts receivable that the entity owes to a state agency.
- (3) "Civil accounts receivable" means the same as that term is defined in Section 77-32b-102.
- (4) "Civil judgment of restitution" means the same as that term is defined in Section 77-32b-102.
- (5) "Criminal accounts receivable" means the same as that term is defined in Section 77-32b-102.
- (6) "Entity" means an individual, a corporation, partnership, or other organization that pays taxes to, or does business, with the state.
- (7) "Office" means the Office of State Debt Collection created in Section 63A-3-502.
- (8) "Past due" means any accounts receivable that the state has not received by the payment due date.
- (9) "Political subdivision" means the same as that term is defined in Section 63G-7-102.
- (10) "Restitution" means the same as that term is defined in Section 77-38b-102.
- (11)
  - (a) "State agency" includes:
    - (i) an executive branch agency;
    - (ii) the legislative branch of state government; and
    - (iii) the judicial branches of state government, including justice courts.
  - (b) "State agency" does not include:
    - (i) any institution of higher education;
    - (ii) except in Subsection 63A-3-502(7)(g), the State Tax Commission; or

- (iii) the administrator of the Uninsured Employers' Fund appointed by the Labor Commissioner under Section 34A-2-704, solely for the purposes of collecting money required to be deposited into the Uninsured Employers' Fund under:
  - (A) Section 34A-1-405;
  - (B) Title 34A, Chapter 2, Workers' Compensation Act; or
  - (C) Title 34A, Chapter 3, Utah Occupational Disease Act.
- (12) "Writing-off" means the removal of an accounts receivable from an agency's accounts receivable records but does not necessarily eliminate further collection efforts.

Amended by Chapter 260, 2021 General Session

**63A-3-502 Office of State Debt Collection created -- Duties.**

- (1) The state and each state agency shall comply with:
  - (a) the requirements of this chapter; and
  - (b) any rules established by the Office of State Debt Collection.
- (2) There is created the Office of State Debt Collection in the Division of Finance.
- (3) The office shall:
  - (a) have overall responsibility for collecting and managing state receivables;
  - (b) assist the Division of Finance to develop consistent policies governing the collection and management of state receivables;
  - (c) oversee and monitor state receivables to ensure that state agencies are:
    - (i) implementing all appropriate collection methods;
    - (ii) following established receivables guidelines; and
    - (iii) accounting for and reporting receivables in the appropriate manner;
  - (d) assist the Division of Finance to develop policies, procedures, and guidelines for accounting, reporting, and collecting money owed to the state;
  - (e) provide information, training, and technical assistance to each state agency on various collection-related topics;
  - (f) write an inclusive receivables management and collection manual for use by each state agency;
  - (g) prepare quarterly and annual reports of the state's receivables;
  - (h) create or coordinate a state accounts receivable database;
  - (i) develop reasonable criteria to gauge state agencies' efforts in maintaining an effective accounts receivable program;
  - (j) identify any state agency that is not making satisfactory progress toward implementing collection techniques and improving accounts receivable collections;
  - (k) coordinate information, systems, and procedures between each state agency to maximize the collection of past-due accounts receivable;
  - (l) establish an automated cash receipt process between each state agency;
  - (m) assist the Division of Finance to establish procedures for writing off accounts receivable for accounting and collection purposes;
  - (n) establish standard time limits after which an agency will delegate responsibility to collect state receivables to the office or the office's designee;
  - (o) be a real party in interest for:
    - (i) an account receivable referred to the office by any state agency; and
    - (ii) a civil judgment of restitution entered on a civil judgment docket by a court;
  - (p) allocate money collected for a judgment entered on the civil judgment docket under Section 77-18-114 in accordance with Sections 51-9-402, 63A-3-506, and 78A-5-110;

- (q) if a criminal accounts receivable is transferred to the office under Subsection 77-32b-103(2)(a)(ii), receive, process, and distribute payments for the criminal accounts receivable;
  - (r) provide a debtor online access to the debtor's accounts receivable or criminal accounts receivable in accordance with Section 63A-3-502.5;
  - (s) establish a written policy for each of the following:
    - (i) the settling of an accounts receivable, including any amount of restitution owed to a victim in a civil judgment of restitution if the victim approves of the settlement;
    - (ii) allowing a debtor to pay off a single debt as part of an accounts receivable even if the debtor has a balance on another debt as part of an accounts receivable or criminal accounts receivable;
    - (iii) setting a payment deadline for settlement agreements and for obtaining an extension of a settlement agreement deadline; and
    - (iv) reducing administrative costs when a settlement has been reached;
  - (t) consult with a state agency on whether:
    - (i) the office may agree to a settlement for an amount that is less than the debtor's principal amount; and
    - (ii) the state agency may retain authority to negotiate a settlement with a debtor; and
  - (u) provide the terms and conditions of any payment arrangement that the debtor has made with a state agency or the office when:
    - (i) the payment arrangement is created; or
    - (ii) the debtor requests a copy of the terms and conditions.
- (4) The office may:
- (a) recommend to the Legislature new laws to enhance collection of past-due accounts by state agencies;
  - (b) collect accounts receivables for higher education entities, if the higher education entity agrees;
  - (c) prepare a request for proposal for consulting services to:
    - (i) analyze the state's receivable management and collection efforts; and
    - (ii) identify improvements needed to further enhance the state's effectiveness in collecting the state's receivables;
  - (d) contract with private or state agencies to collect past-due accounts;
  - (e) perform other appropriate and cost-effective coordinating work directly related to collection of state receivables;
  - (f) obtain access to records and databases of any state agency that are necessary to the duties of the office by following the procedures and requirements of Section 63G-2-206, including the financial declaration form described in Section 77-38b-204;
  - (g) collect interest and fees related to the collection of receivables under this chapter, and establish, by following the procedures and requirements of Section 63J-1-504:
    - (i) a fee to cover the administrative costs of collection on accounts administered by the office;
    - (ii) a late penalty fee that may not be more than 10% of the account receivable on accounts administered by the office;
    - (iii) an interest charge that is:
      - (A) the postjudgment interest rate established by Section 15-1-4 in judgments established by the courts; or
      - (B) not more than 2% above the prime rate as of July 1 of each fiscal year for accounts receivable for which no court judgment has been entered; and
    - (iv) fees to collect accounts receivable for higher education;



- (h) collect reasonable attorney fees and reasonable costs of collection that are related to the collection of receivables under this chapter;
  - (i) make rules that allow accounts receivable to be collected over a reasonable period of time and under certain conditions with credit cards;
  - (j) for a case that is referred to the office or in which the office is a judgment creditor, file a motion or other document related to the office or the accounts receivable in that case, including a satisfaction of judgment, in accordance with the Utah Rules of Civil Procedure;
  - (k) ensure that judgments for which the office is the judgment creditor are renewed, as necessary;
  - (l) notwithstanding Section 63G-2-206, share records obtained under Subsection (4)(f) with private sector vendors under contract with the state to assist state agencies in collecting debts owed to the state agencies without changing the classification of any private, controlled, or protected record into a public record;
  - (m) enter into written agreements with other governmental agencies to obtain and share information for the purpose of collecting state accounts receivable; and
  - (n) collect accounts receivable for a political subdivision of the state if the political subdivision enters into an agreement or contract with the office under Title 11, Chapter 13, Interlocal Cooperation Act, for the office to collect the political subdivision's accounts receivable.
- (5) The office shall ensure that:
- (a) a record obtained by the office or a private sector vendor under Subsection (4)(l):
    - (i) is used only for the limited purpose of collecting accounts receivable; and
    - (ii) is subject to federal, state, and local agency records restrictions; and
  - (b) any individual employed by, or formerly employed by, the office or a private sector vendor as referred to in Subsection (4)(l) is subject to:
    - (i) the same duty of confidentiality with respect to the record imposed by law on officers and employees of the state agency from which the record was obtained; and
    - (ii) any civil or criminal penalties imposed by law for violations of lawful access to a private, controlled, or protected record.
- (6)
- (a) The office shall collect a civil accounts receivable or a civil judgment of restitution ordered by a court as a result of prosecution for a criminal offense that have been transferred to the office under Subsection 77-18-114(1) or (2).
  - (b) The office may not assess:
    - (i) the interest charge established by the office under Subsection (4) on an account receivable subject to the postjudgment interest rate established by Section 15-1-4; and
    - (ii) an interest charge on a criminal accounts receivable that is transferred to the office under Subsection 77-32b-103(2)(a)(ii).
- (7) The office shall require a state agency to:
- (a) transfer collection responsibilities to the office or the office's designee according to time limits established by the office;
  - (b) make annual progress towards implementing collection techniques and improved accounts receivable collections;
  - (c) use the state's accounts receivable system or develop systems that are adequate to properly account for and report the state's receivables;
  - (d) develop and implement internal policies and procedures that comply with the collections policies and guidelines established by the office;
  - (e) provide internal accounts receivable training to staff involved in the management and collection of receivables as a supplement to statewide training;

- (f) bill for and make initial collection efforts of the state agency's receivables up to the time the accounts must be transferred; and
  - (g) submit quarterly receivable reports to the office that identify the age, collection status, and funding source of each receivable.
- (8) All interest, fees, and other amounts authorized to be collected by the office under Subsection (4)(g):
- (a) are penalties that may be charged by the office;
  - (b) do not require an order from a court for the office to assess or collect;
  - (c) are not compensation for actual pecuniary loss;
  - (d) for a civil accounts receivable:
    - (i) begin to accrue on the day on which the civil accounts receivable is entered on the civil judgment docket under Subsection 77-18-114(1) or (2); and
    - (ii) may be collected as part of the civil accounts receivable;
  - (e) for a civil judgment of restitution:
    - (i) begin to accrue on the day on which the civil judgment of restitution is entered on the civil judgment docket under Subsection 77-18-114(1); and
    - (ii) may be collected as part of the civil judgment of restitution;
  - (f) for all other accounts receivable:
    - (i) begin to accrue on the day on which the accounts receivable is transferred to the office, even if there is no court order on the day on which the accounts receivable is transferred; and
    - (ii) may be collected as part of the accounts receivable; and
  - (g) may be waived by:
    - (i) the office; or
    - (ii) if the interest, fee, or other amount is charged in error, the court.

Amended by Chapter 113, 2023 General Session

**63A-3-502.5 Debtor's online access to debt amount.**

- (1) As used in this section, "debt" means:
- (a) an accounts receivable; or
  - (b) a criminal accounts receivable.
- (2) On or before December 31, 2022, the office shall provide a debtor who has a debt transferred to the office online access to the debtor's account that identifies:
- (a) the total balance the debtor owes for a debt;
  - (b)
    - (i) each person to whom the debtor owes a debt; or
    - (ii) if the person's name is redacted by a court or a state agency with authority to redact, another identifier for the debt in place of the person's name;
  - (c) for each person the debtor owes:
    - (i) the debtor's original balance for a debt; and
    - (ii) the debtor's current balance for a debt;
  - (d) the current interest rate for a debt; and
  - (e) the history of:
    - (i) any additional charge added to a debt including:
      - (A) the reason for the charge;
      - (B) the total amount of the charge; and
      - (C) the date the charge was added; and
    - (ii) any payment made by the debtor including:

- (A) the debt to which a payment was applied; and
- (B) whether the payment was applied to an administrative cost, accrued interest, the principal, or other fee.

Enacted by Chapter 323, 2022 General Session

**63A-3-503 Legal services.**

The Office of the Attorney General shall:

- (1) provide to the office all legal services and advice related to the collection of accounts receivable:
  - (a) owed to the state; or
  - (b) for which the office has collection responsibilities; and
- (2) establish policies governing:
  - (a) legal matters involving accounts receivable; and
  - (b) litigation of past-due accounts receivable.

Amended by Chapter 74, 2013 General Session

**63A-3-504 Rulemaking authority -- Collection techniques.**

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules:

- (1) providing details, as necessary, for the distribution of debts collected in accordance with the priorities under Subsection 63A-3-505(3);
- (2) to govern collection techniques, which may include the use of:
  - (a) credit reporting bureaus;
  - (b) collection agencies;
  - (c) garnishments;
  - (d) liens;
  - (e) judgments; and
  - (f) administrative offsets; and
- (3) establishing that any portion of a payment for a civil judgment of restitution be credited to principal first and, if the principal amount owed for the civil judgment of restitution has been satisfied, the remainder of the payment be credited to interest that has accrued on the principal.

Amended by Chapter 260, 2021 General Session

**63A-3-505 State Debt Collection Fund.**

- (1) There is created an expendable special revenue fund entitled the "State Debt Collection Fund."
- (2) The fund consists of:
  - (a) all amounts appropriated to the fund under this chapter;
  - (b) fees and interest established by the office under Subsection 63A-3-502(4)(g); and
  - (c) except as otherwise provided by law, all postjudgment interest collected by the office or the state, except postjudgment interest on a civil judgment of restitution.
- (3) Money in this fund shall be used to pay for:
  - (a) the costs of the office in the performance of the office's duties under this chapter;
  - (b) a civil judgment of restitution for which debt is owed;
  - (c) interest accrued that is associated with the debt;

- (d) principal on the debt to the state agencies or other entities that placed the receivable for collection; and
  - (e) other legal obligations including those ordered by a court.
- (4)
- (a) The fund may collect interest.
  - (b) All interest earned from the fund shall be deposited in the General Fund.
- (5) The office shall ensure that money remaining in the fund at the end of the fiscal year that is not committed under the priorities established under Subsection (3) is deposited into the General Fund.

Amended by Chapter 260, 2021 General Session

**63A-3-506 Allocation of funds.**

- (1) Except as provided in Subsection (2), the money collected by the office less the office's fees shall be allocated on a prorated basis to the various revenue types that generated the accounts receivable.
- (2) Notwithstanding the requirements of Subsection (1):
- (a) federal cost allocation requirements for specific accounts receivable related to programs that are supported by federal funds take precedence over other cost allocation methods provided in this section; and
  - (b) the office shall use interest and fees collected on past due accounts receivable as provided in Section 63A-3-505.

Renumbered and Amended by Chapter 79, 2011 General Session

**63A-3-507 Administrative garnishment order.**

- (1) Subject to Subsection (2), if a judgment is entered against a debtor, the office may issue an administrative garnishment order against the debtor's personal property, including wages, in the possession of a party other than the debtor in the same manner and with the same effect as if the order was a writ of garnishment issued by a court with jurisdiction.
- (2) The office may issue the administrative garnishment order if:
- (a) the order is signed by the director or the director's designee; and
  - (b) the underlying debt is for:
    - (i) nonpayment of a civil accounts receivable or a civil judgment of restitution; or
    - (ii) nonpayment of a judgment, or abstract of judgment or award filed with a court, based on an administrative order for payment issued by an agency of the state.
- (3) An administrative garnishment order issued in accordance with this section is subject to the procedures and due process protections provided by Rule 64D, Utah Rules of Civil Procedure, except as provided by Section 70C-7-103.
- (4) An administrative garnishment order issued by the office shall:
- (a) contain a statement that includes:
    - (i) if known:
      - (A) the nature, location, account number, and estimated value of the property; and
      - (B) the name, address, and phone number of the person holding the property;
    - (ii) whether any of the property consists of earnings;
    - (iii) the amount of the judgment and the amount due on the judgment; and
    - (iv) the name, address, and phone number of any person known to the plaintiff to claim an interest in the property;

- (b) identify the defendant, including the defendant's name and last known address;
  - (c) notify the defendant of the defendant's right to reply to answers and request a hearing as provided by Rule 64D, Utah Rules of Civil Procedure; and
  - (d) state where the garnishee may deliver property.
- (5) The office may, in the office's discretion, include in an administrative garnishment order:
- (a) the last four digits of the defendant's Social Security number;
  - (b) the last four digits of the defendant's driver license number;
  - (c) the state in which the defendant's driver license was issued;
  - (d) one or more interrogatories inquiring:
    - (i) whether the garnishee is indebted to the defendant and, if so, the nature of the indebtedness;
    - (ii) whether the garnishee possesses or controls any property of the defendant and, if so, the nature, location, and estimated value of the property;
    - (iii) whether the garnishee knows of any property of the defendant in the possession or under the control of another and, if so:
      - (A) the nature, location, and estimated value of the property; and
      - (B) the name, address, and telephone number of the person who has possession or control of the property;
    - (iv) whether the garnishee is deducting a liquidated amount in satisfaction of a claim against the plaintiff or the defendant, whether the claim is against the plaintiff or the defendant, and the amount deducted;
    - (v) the date and manner of the garnishee's service of papers upon the defendant and any third party;
    - (vi) the dates on which any previously served writs of continuing garnishment were served; and
    - (vii) any other relevant information, including the defendant's position, rate of pay, method of compensation, pay period, and computation of the amount of the defendant's disposable earnings.
- (6)
- (a) A garnishee who acts in accordance with this section and the administrative garnishment issued by the office is released from liability unless an answer to an interrogatory is successfully controverted.
  - (b) Except as provided in Subsection (6)(c), if the garnishee fails to comply with an administrative garnishment issued by the office without a court or final administrative order directing otherwise, the garnishee is liable to the office for an amount determined by the court.
  - (c) The amount for which a garnishee is liable under Subsection (6)(b) includes:
    - (i)
      - (A) the value of the judgment; or
      - (B) the value of the property, if the garnishee shows that the value of the property is less than the value of the judgment;
    - (ii) reasonable costs; and
    - (iii) attorney fees incurred by the parties as a result of the garnishee's failure.
  - (d) If the garnishee shows that the steps taken to secure the property were reasonable, the court may excuse the garnishee's liability in whole or in part.
- (7)
- (a) If the office has reason to believe that a garnishee has failed to comply with the requirements of this section in the garnishee's response to a garnishment order issued under this section, the office may submit a motion to the court requesting the court to issue an order against the

garnishee requiring the garnishee to appear and show cause why the garnishee should not be held liable under this section.

- (b) The office shall attach to a motion under Subsection (7)(a) a statement that the office has in good faith conferred or attempted to confer with the garnishee in an effort to settle the issue without court action.
- (8) A person is not liable as a garnishee for drawing, accepting, making, or endorsing a negotiable instrument if the instrument is not in the possession or control of the garnishee at the time of service of the administrative garnishment order.
- (9)
  - (a) A person indebted to the defendant may pay to the office the amount of the debt or an amount to satisfy the administrative garnishment.
  - (b) The office's receipt of an amount described in Subsection (9)(a) discharges the debtor for the amount paid.
- (10) A garnishee may deduct from the property any liquidated claim against the defendant.
- (11)
  - (a) If a debt to the garnishee is secured by property, the office:
    - (i) is not required to apply the property to the debt when the office issues the administrative garnishment order; and
    - (ii) may obtain a court order authorizing the office to buy the debt and requiring the garnishee to deliver the property.
  - (b) Notwithstanding Subsection (11)(a)(i):
    - (i) the administrative garnishment order remains in effect; and
    - (ii) the office may apply the property to the debt.
  - (c) The office or a third party may perform an obligation of the defendant and require the garnishee to deliver the property upon completion of performance or, if performance is refused, upon tender of performance if:
    - (i) the obligation is secured by property; and
    - (ii)
      - (A) the obligation does not require the personal performance of the defendant; and
      - (B) a third party may perform the obligation.
- (12)
  - (a) The office may issue a continuing garnishment order against a nonexempt periodic payment.
  - (b) This section is subject to the Utah Exemptions Act.
  - (c) A continuing garnishment order issued in accordance with this section applies to payments to the defendant from the date of service upon the garnishee until the earliest of the following:
    - (i) the last periodic payment;
    - (ii) the judgment upon which the administrative garnishment order is issued is stayed, vacated, or satisfied in full; or
    - (iii) the office releases the order.
  - (d) No later than seven days after the last day of each payment period, the garnishee shall with respect to that period:
    - (i) answer each interrogatory;
    - (ii) serve an answer to each interrogatory on the office, the defendant, and any other person who has a recorded interest in the property; and
    - (iii) deliver the property to the office.
  - (e) If the office issues a continuing garnishment order during the term of a writ of continuing garnishment issued by the district court, the order issued by the office:

- (i) is tolled when a writ of garnishment or other income withholding is already in effect and is withholding greater than or equal to the maximum portion of disposable earnings described in Subsection (13);
  - (ii) is collected in the amount of the difference between the maximum portion of disposable earnings described in Subsection (13) and the amount being garnished by an existing writ of continuing garnishment if the maximum portion of disposable earnings exceed the existing writ of garnishment or other income withholding; and
  - (iii) shall take priority upon the termination of the current term of existing writs.
- (13) The maximum portion of disposable earnings of an individual subject to seizure in accordance with this section is the lesser of:
- (a) 25% of the defendant's disposable earnings for any other judgment; or
  - (b) the amount by which the defendant's disposable earnings for a pay period exceeds the number of weeks in that pay period multiplied by 30 times the federal minimum wage as provided in 29 U.S.C. Sec. 201 et seq., Fair Labor Standards Act of 1938.
- (14)
- (a) In accordance with the requirements of this Subsection (14), the office may, at its discretion, determine a dollar amount that a garnishee is to withhold from earnings and deliver to the office in a continuing administrative garnishment order issued under this section.
  - (b) The office may determine the dollar amount that a garnishee is to withhold from earnings under Subsection (14)(a) if the dollar amount determined by the office:
    - (i) does not exceed the maximum amount allowed under Subsection (13); and
    - (ii) is based on:
      - (A) earnings information received by the office directly from the Utah Department of Workforce Services; or
      - (B) previous garnishments issued to the garnishee by the office where payments were received at a consistent dollar amount.
  - (c) The earnings information or previous garnishments relied on by the office under Subsection (14)(b)(ii) to calculate a dollar amount under this Subsection (14) shall be:
    - (i) for one debtor;
    - (ii) from the same employer;
    - (iii) for two or more consecutive quarters; and
    - (iv) received within the last six months.
- (15)
- (a) A garnishee who provides the calculation for withholdings on a defendant's wages in the garnishee's initial response to an interrogatory in an administrative garnishment order under this section is not required to provide the calculation for withholdings after the garnishee's initial response if:
    - (i) the garnishee's accounting system automates the amount of defendant's wages to be paid under the garnishment; and
    - (ii) the defendant's wages do not vary by more than five percent from the amount disclosed in the garnishee's initial response.
  - (b) Notwithstanding Subsection (15)(a), upon request by the office or the defendant, a garnishee shall provide, for the last pay period or other pay period specified by the office or defendant, a calculation of the defendant's wages and withholdings and the amount garnished.
- (16)
- (a) A garnishee under an administrative garnishment order under this section is entitled to receive a garnishee fee, as provided in this Subsection (16), in the amount of:
    - (i) \$10 per garnishment order, for a noncontinuing garnishment order; and

- (ii) \$25, as a one-time fee, for a continuing garnishment order.
- (b) A garnishee may deduct the amount of the garnishee fee from the amount to be remitted to the office under the administrative garnishment order, if the amount to be remitted exceeds the amount of the fee.
- (c) If the amount to be remitted to the office under an administrative garnishment order does not exceed the amount of the garnishee fee:
  - (i) the garnishee shall notify the office that the amount to be remitted does not exceed the amount of the garnishee fee; and
  - (ii)
    - (A) the garnishee under a noncontinuing garnishment order shall return the administrative garnishment order to the office, and the office shall pay the garnishee the garnishee fee; or
    - (B) the garnishee under a continuing garnishment order shall delay remitting to the office until the amount to be remitted exceeds the garnishee fee.
- (d) If, upon receiving the administrative garnishment order, the garnishee does not possess or control any property, including money or wages, in which the defendant has an interest:
  - (i) the garnishee under a continuing or noncontinuing garnishment order shall, except as provided in Subsection (16)(d)(ii), return the administrative garnishment order to the office, and the office shall pay the garnishee the applicable garnishee fee; or
  - (ii) if the garnishee under a continuing garnishment order believes that the garnishee will, within 90 days after issuance of the continuing garnishment order, come into possession or control of property in which the defendant owns an interest, the garnishee may retain the garnishment order and deduct the garnishee fee for a continuing garnishment once the amount to be remitted exceeds the garnishee fee.
- (17) Section 78A-2-216 does not apply to an administrative garnishment order issued under this section.
- (18) An administrative garnishment instituted in accordance with this section shall continue to operate and require that a person withhold the nonexempt portion of earnings at each succeeding earning disbursement interval until the total amount due in the garnishment is withheld or the garnishment is released in writing by the court or office.
- (19) If the office issues an administrative garnishment order under this section to collect an amount owed on a civil accounts receivable or a civil judgment of restitution, the administrative garnishment order shall be construed as a continuation of the criminal action for which the civil accounts receivable or civil judgment of restitution arises if the amount owed is from a fine, fee, or restitution for the criminal action.

Amended by Chapter 145, 2021 General Session

Amended by Chapter 260, 2021 General Session

## **Chapter 4 Risk Management**

### **Part 1 Risk Manager**



**63A-4-101.1 Definitions.**

As used in this chapter:

- (1) "Captive insurance company" means the same as that term is defined in Section 31A-37-102.
- (2) "Covered entity" means a participating entity of:
  - (a) the Risk Management Fund; or
  - (b) any captive insurance company created by the risk manager.

Enacted by Chapter 33, 2021 General Session

**63A-4-101.5 Risk manager -- Appointment -- Duties.**

- (1)
  - (a) There is created within the department the Division of Risk Management.
  - (b) The executive director shall, with the approval of the governor, appoint a risk manager as the division director, who shall be qualified by education and experience in the management of general property and casualty insurance.
- (2) The risk manager shall:
  - (a) except as provided in Subsection (4), acquire and administer the following purchased by the state or any captive insurance company created by the risk manager:
    - (i) all property and casualty insurance;
    - (ii) reinsurance of property and casualty insurance; and
    - (iii) subject to Section 34A-2-203, workers' compensation insurance;
  - (b) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
    - (i) prescribing reasonable and objective underwriting and risk control standards for:
      - (A) all covered entities of the Risk Management Fund; and
      - (B) any captive insurance company created by the risk manager;
    - (ii) prescribing the risks to be covered by the Risk Management Fund and the extent to which these risks will be covered;
    - (iii) prescribing the properties, risks, deductibles, and amount limits eligible for payment out of the Risk Management Fund;
    - (iv) prescribing procedures for making claims and proof of loss; and
    - (v) establishing procedures for the resolution of disputes relating to coverage or claims, which may include binding arbitration;
  - (c) implement a risk management and loss prevention program for covered entities for the purpose of reducing risks, accidents, and losses to assist covered entities in fulfilling their responsibilities for risk control and safety;
  - (d) coordinate and cooperate with any covered entity having responsibility to manage and protect state properties, including:
    - (i) the state fire marshal;
    - (ii) the director of the Division of Facilities Construction and Management;
    - (iii) the Department of Public Safety;
    - (iv) institutions of higher education;
    - (v) school districts; and
    - (vi) charter schools;
  - (e) maintain records necessary to fulfill the requirements of this section;
  - (f) manage the Risk Management Fund and any captive insurance company created by the risk manager in accordance with economically and actuarially sound principles to produce adequate reserves for the payment of contingencies, including unpaid and unreported claims,

and may purchase any insurance or reinsurance considered necessary to accomplish this objective; and

- (g) inform the covered entity's governing body and the governor when any covered entity fails or refuses to comply with reasonable risk control recommendations made by the risk manager.
- (3) Before the effective date of any rule, the risk manager shall provide a copy of the rule to each covered entity affected by it.
- (4) The risk manager may not use a captive insurance company created by the risk manager to purchase:
  - (a) workers' compensation insurance;
  - (b) health insurance; or
  - (c) life insurance.

Amended by Chapter 169, 2022 General Session

**63A-4-102 Risk manager -- Powers.**

- (1) The risk manager may:
  - (a) enter into contracts;
  - (b) form one or more captive insurance companies authorized under Title 31A, Chapter 37, Captive Insurance Companies Act;
  - (c) purchase insurance or reinsurance;
  - (d) adjust, settle, and pay claims;
  - (e) pay expenses and costs;
  - (f) study the risks of all covered entities and properties;
  - (g) issue certificates of coverage or insurance for covered entities with respect to any risks covered by the Risk Management Fund or any captive insurance company created by the risk manager;
  - (h) make recommendations about risk management and risk reduction strategies to covered entities;
  - (i) in consultation with the attorney general, prescribe insurance, indemnification, and liability provisions to be included in all state contracts;
  - (j) review covered entity building construction, major remodeling plans, program plans, and make recommendations to the covered entity about needed changes to address risk considerations;
  - (k) attend covered entity planning and management meetings when necessary;
  - (l) review any proposed legislation and communicate with legislators and legislative committees about the liability or risk management issues connected with any legislation; and
  - (m) solicit any needed information about covered entity plans, programs, or risks necessary to perform the risk manager's responsibilities under this part.
- (2)
  - (a) The risk manager may expend money from the Risk Management Fund to procure and provide coverage to all covered entities and their indemnified employees, except those entities or employees specifically exempted by statute.
  - (b) The risk manager shall apportion the costs of that coverage according to the requirements of this part.
- (3) Before charging a rate, fee, or other amount to an executive branch agency, or to a subscriber of services other than an executive branch agency, the director shall:
  - (a) submit the proposed rates, fees, or other amount and cost analysis to the Rate Committee established in Section 63A-1-114; and
  - (b) obtain the approval of the Legislature as required by Section 63J-1-410.

- (4) The director shall conduct a market analysis by July 1, 2005, and periodically thereafter, of proposed rates and premiums, which analysis shall include a comparison of the division's rates and premiums with the rates and premiums of other public or private sector providers where comparable services and rates are reasonably available.

Amended by Chapter 169, 2022 General Session

**63A-4-103 Risk management -- Duties of covered entities.**

- (1)
  - (a) Unless expressly authorized by statute, a covered entity may not:
    - (i) purchase insurance or self-fund any risk unless authorized by the risk manager; or
    - (ii) procure or provide liability insurance for the state.
  - (b)
    - (i) Notwithstanding the provisions of Subsection (1)(a), the Utah Board of Higher Education may authorize higher education institutions to purchase insurance for, or self-fund, risks associated with their programs and activities that are not covered through the risk manager.
    - (ii) The Utah Board of Higher Education shall provide copies of those purchased policies to the risk manager.
    - (iii) The Utah Board of Higher Education shall ensure that the state is named as additional insured on any of those policies.
- (2) Each covered entity shall:
  - (a) comply with reasonable risk related recommendations made by the risk manager;
  - (b) participate in risk management training activities conducted or sponsored by the risk manager;
  - (c) include the insurance, indemnification, and liability provisions prescribed by the risk manager in all state contracts, together with a statement certifying to the other party to the contract that the insurance and liability provisions in the contract are those prescribed by the risk manager;
  - (d) upon request of the risk manager, provide written notice to the risk manager that construction and major remodeling plans relating to covered entity buildings and facilities to be covered by the Risk Management Fund are available for review at each principal design stage, for risk control purposes, and make them available to the risk manager for review and to provide recommendations; and
  - (e) cooperate fully with requests from the risk manager for covered entity planning, program, or risk related information, and allow the risk manager to attend covered entity planning and management meetings.
- (3) Failure to include in the contract the provisions required by Subsection (2)(c) does not make the contract unenforceable by the state.

Amended by Chapter 33, 2021 General Session

**63A-4-104 Course-of-construction insurance for facilities constructed by This is the Place Foundation.**

The risk manager may provide course-of-construction insurance for facilities constructed by This is the Place Foundation at This is the Place State Park and bill the Division of State Parks for the cost of the insurance.

Amended by Chapter 280, 2021 General Session

## Part 2 Risk Management Fund

### **63A-4-201 Risk Management Fund created -- Administration -- Use.**

- (1)
  - (a) There is created the Risk Management Fund, which shall be administered by the risk manager.
  - (b) The fund shall cover property, liability, fidelity, and other risks as determined by the risk manager in consultation with the executive director.
- (2) The risk manager may only use the Risk Management Fund to pay:
  - (a) insurance or reinsurance premiums;
  - (b) costs of administering the Risk Management Fund and any captive insurance companies created by the risk manager;
  - (c) loss adjustment expenses;
  - (d) risk control and related educational and training expenses; and
  - (e) loss costs which at the time of loss were eligible for payment under rules made by the risk manager in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3) In addition to any money appropriated to the Risk Management Fund by the Legislature, the risk manager shall deposit with the state treasurer for credit to the Risk Management Fund:
  - (a) any insured loss or loss expenses paid by insurance or reinsurance companies;
  - (b) the gross amount of all premiums and surcharges received under Section 63A-4-202;
  - (c) the net refunds from cancelled insurance policies necessary to self-insure previously insured risks, with the balance of the proceeds to be refunded to the previously insured entities;
  - (d) all refunds, returns, or dividends from insurance carriers not specifically covered in Subsections (3)(a), (b), and (c);
  - (e) savings from amounts otherwise appropriated for participation in the fund; and
  - (f) all net proceeds from sale of salvage and subrogation recoveries from adverse parties related to losses paid out of the fund.
- (4) The state treasurer shall invest the Risk Management Fund in accordance with Section 63A-4-208 and deposit all interest or other income earned from investments into the Risk Management Fund.

Amended by Chapter 169, 2022 General Session

### **63A-4-202 Determination of insurance premiums -- Information furnished by covered entities -- Notice to covered entities.**

- (1) Each covered entity shall provide the risk manager with all reasonable information necessary to compute insurance premiums whenever the risk manager requests that information.
- (2)
  - (a) The risk manager shall charge to each entity that receives insurance coverage from the Risk Management Fund or any captive insurance company created by the risk manager its proportionate share of the cost incurred based upon actuarially sound rating techniques.
  - (b) The risk manager shall include in the premium determined under this section all costs of operating the Risk Management Fund as stated in Section 63A-4-201 and operating any captive insurance company created by the risk manager.

- (3) To enable each covered entity to meet its budgeting requirements, the risk manager shall provide each covered entity with projected insurance costs for the next two fiscal years within the time limits required.

Amended by Chapter 33, 2021 General Session

**63A-4-203 Refusal of agency to pay charges -- Notice to the Division of Finance for collection.**

- (1) If any agency of the state refuses to remit any payment as charged by the risk manager within 30 days after the date due, the risk manager may certify to the director of the Division of Finance the fact of the refusal and the amount of the delinquent payment, together with a request that the amount be transferred from funds of the delinquent agency to the Risk Management Fund.
- (2) The risk manager shall mail a copy of the certification and request to the delinquent agency.
- (3) The risk manager shall resolve claims against the fund in an expeditious manner.

Renumbered and Amended by Chapter 212, 1993 General Session

**63A-4-204 School district participation in Risk Management Fund.**

- (1)
  - (a) For the purpose of this section, action by a public school district shall be taken upon resolution by a majority of the members of the school district's board of education.
  - (b)
    - (i) Upon approval by the state risk manager and the board of education of the school district, a public school district may participate in the Risk Management Fund or any captive insurance company created by the risk manager, and may permit a foundation established under Section 53E-3-403 to participate in the Risk Management Fund or any captive insurance company created by the risk manager.
    - (ii) Upon approval by the state risk manager and the State Board of Education, a state public education foundation may participate in the Risk Management Fund or any captive insurance company created by the risk manager.
  - (c) Subject to any cancellation or other applicable coverage provisions, either the state risk manager or the public school district may terminate participation in the Risk Management Fund.
- (2) The state risk manager shall contract for all insurance, reinsurance, legal, loss adjustment, consulting, loss control, safety, and other related services necessary to support the insurance programs provided to a participating public school district, except that all supporting legal services are subject to the prior approval of the state attorney general.
- (3) Each public school district participating in the Risk Management Fund shall comply with Section 63A-4-103.
- (4)
  - (a) Each year, the risk manager shall prepare, in writing, the information required by Subsection (4)(b) regarding the coverage against legal liability provided a school district employee of this state:
    - (i) by the Risk Management Fund or any captive insurance company created by the risk manager;
    - (ii) under Title 63G, Chapter 7, Governmental Immunity Act of Utah; and

- (iii) under Title 52, Chapter 6, Reimbursement of Legal Fees and Costs to Officers and Employees Act.
- (b)
  - (i) The information described in Subsection (4)(a) shall include:
    - (A) the eligibility requirements, if any, to receive the coverage;
    - (B) the basic nature of the coverage for a school district employee, including what is not covered; and
    - (C) whether the coverage is primary or in excess of any other coverage the risk manager knows is commonly available to a school district employee in this state.
  - (ii) The information described in Subsection (4)(a) may include:
    - (A) comparisons the risk manager considers beneficial to a school district employee between:
      - (I) the coverage described in Subsection (4)(a); and
      - (II) other coverage the risk manager knows is commonly available to a school district employee in this state; and
    - (B) any other information the risk manager considers appropriate.
- (c) By no later than July 1 of each year, the risk manager shall provide the information prepared under this Subsection (4) to each school district that participates in the Risk Management Fund or any captive insurance company created by the risk manager.
- (d) A school district that participates in the Risk Management Fund shall provide a copy of the information described in Subsection (4)(c) to each school district employee within the school district no later than the first day of each school year.
- (e) If a school district hires an employee after the first day of the school year, no later than 10 days after the day on which the employee is hired, the school district shall provide the information described in Subsection (4)(c) to the employee.

Amended by Chapter 33, 2021 General Session

**63A-4-204.5 Charter school participation in Risk Management Fund.**

- (1) A charter school established under the authority of Title 53G, Chapter 5, Charter Schools, may participate in the Risk Management Fund or any captive insurance company created by the risk manager upon the approval of the state risk manager and the governing body of the charter school.
- (2) Each charter school participating in the Risk Management Fund shall comply with Section 63A-4-103.
- (3)
  - (a) Each year, the risk manager shall prepare, in writing, the information required by Subsection (3)(b) regarding the coverage against legal liability provided a charter school employee of this state:
    - (i) by the Risk Management Fund or any captive insurance company created by the risk manager;
    - (ii) under Title 63G, Chapter 7, Governmental Immunity Act of Utah; and
    - (iii) under Title 52, Chapter 6, Reimbursement of Legal Fees and Costs to Officers and Employees Act.
  - (b)
    - (i) The information described in Subsection (3)(a) shall include:
      - (A) the eligibility requirements, if any, to receive the coverage;
      - (B) the basic nature of the coverage for a charter school employee, including what is not covered; and

- (C) whether the coverage is primary or in excess of any other coverage the risk manager knows is commonly available to a charter school employee in this state.
- (ii) The information described in Subsection (3)(a) may include:
  - (A) comparisons the risk manager considers beneficial to a charter school employee between:
    - (I) the coverage described in Subsection (3)(a); and
    - (II) other coverage the risk manager knows is commonly available to a charter school employee in this state; and
  - (B) any other information the risk manager considers appropriate.
- (c) By no later than July 1 of each year, the risk manager shall provide the information prepared under this Subsection (3) to each charter school that participates in the Risk Management Fund or any captive insurance company created by the risk manager.
- (d) A charter school that participates in the Risk Management Fund or any captive insurance company created by the risk manager shall provide a copy of the information described in Subsection (3)(c) to each charter school employee within the charter school no later than the first day of each school year.
- (e) If a charter school hires an employee after the first day of the school year, no later than 10 days after the day on which the employee is hired, the charter school shall provide the information described in Subsection (3)(c) to the employee.

Amended by Chapter 33, 2021 General Session

**63A-4-205.5 Risk management -- Coverage of the Utah Communications Authority.**

The Utah Communications Authority established under authority of Title 63H, Chapter 7a, Utah Communications Authority Act, may participate in the Risk Management Fund or any captive insurance company created by the risk manager.

Amended by Chapter 33, 2021 General Session

**63A-4-206 Limits on use of risk management data as evidence.**

Notwithstanding any other provisions of law, any reports, recommendations, surveys, schedules, lists, or data compiled, or action taken or not taken by or at the request of the risk manager to identify, evaluate, or plan the safety enhancement or risk reduction of any potential accident sites or other hazards related to any entity covered by the Risk Management Fund may not be admitted into evidence in any court, or used for any other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in those reports, recommendations, surveys, schedules, lists, or data.

Renumbered and Amended by Chapter 212, 1993 General Session

**63A-4-207 Records of risk management.**

- (1) A record provided to the Division of Risk Management by any governmental entity or political subdivision covered by the Risk Management Fund for the purpose of risk control or claims activities of the division shall be considered a record of the originating governmental entity or political subdivision for purposes of Title 63G, Chapter 2, Government Records Access and Management Act, if the originating governmental entity or political subdivision retains a copy of the record.
- (2) Notwithstanding Subsection 63G-2-201(5), records may be exchanged between the Division of Risk Management and any governmental entity or political subdivision covered by the Risk

Management Fund without meeting the requirements of Section 63G-2-206, provided that they are used only for purposes of risk control or claims activities.

Amended by Chapter 382, 2008 General Session

**63A-4-208 Investment of Risk Management Fund.**

- (1) The state treasurer shall invest the assets of the Risk Management Fund created under Section 63A-4-201 with the primary goal of providing for the stability, income, and growth of the principal.
- (2) Nothing in this section requires a specific outcome in investing.
- (3) The state treasurer may deduct any administrative costs incurred in managing fund assets from earnings before distributing the earnings.
- (4)
  - (a) The state treasurer may employ professional asset managers to assist in the investment of the assets of the funds.
  - (b) The treasurer may only provide compensation to asset managers from earnings generated by the funds' investments.
- (5)
  - (a) The state treasurer shall invest and manage the assets of the funds as a prudent investor would by:
    - (i) considering the purposes, terms, distribution requirements, and other circumstances of the funds; and
    - (ii) exercising reasonable care, skill, and caution in order to meet the standard of care of a prudent investor.
  - (b) In determining whether the state treasurer has met the standard of care of a prudent investor, the judge or finder of fact shall:
    - (i) consider the state treasurer's actions in light of the facts and circumstances existing at the time of the investment decision or action, and not by hindsight; and
    - (ii) evaluate the state treasurer's investment and management decisions respecting individual assets:
      - (A) not in isolation, but in the context of a fund portfolio as a whole; and
      - (B) as a part of an overall investment strategy that has risk and return objectives reasonably suited to the funds.

Enacted by Chapter 33, 2021 General Session

**Chapter 5b  
Administration of State Facilities**

**Part 1  
General Provisions**

**63A-5b-101 Title.**

This chapter is known as "Administration of State Facilities."



Enacted by Chapter 152, 2020 General Session

**63A-5b-102 Definitions.**

As used in this chapter:

- (1) "Capitol hill facilities" means the same as that term is defined in Section 63C-9-102.
- (2) "Capitol hill grounds" means the same as that term is defined in Section 63C-9-102.
- (3) "Compliance agency" means the same as that term is defined in Section 15A-1-202.
- (4) "Director" means the division director, appointed under Section 63A-5b-302.
- (5) "Division" means the Division of Facilities Construction and Management created in Section 63A-5b-301.
- (6) "Institution of higher education" means an institution listed in Subsection 53B-2-101(1).
- (7) "Trust lands administration" means the School and Institutional Trust Lands Administration established in Section 53C-1-201.
- (8) "Utah Board of Higher Education" means the Utah Board of Higher Education established in Section 53B-1-402.

Amended by Chapter 421, 2022 General Session

**Part 3**  
**Division of Facilities Construction and Management**

**63A-5b-301 Creation -- Administration.**

There is created within the department the Division of Facilities Construction and Management, to be administered by a director.

Renumbered and Amended by Chapter 152, 2020 General Session

**63A-5b-302 Director of division -- Appointment.**

The executive director shall appoint the director of the division with the approval of the governor.

Renumbered and Amended by Chapter 152, 2020 General Session

***Superseded 7/1/2024***

**63A-5b-303 Duties and authority of division.**

- (1)
  - (a) The division shall:
    - (i) subject to Subsection (1)(b), supervise and control the allocation of space, in accordance with legislative directive through annual appropriations acts, other legislation, or statute, to agencies in all buildings or space owned, leased, or rented by or to the state, except as provided in Subsection (3) or as otherwise provided by statute;
    - (ii) assure the efficient use of all building space under the division's supervision and control;
    - (iii) acquire title to all real property, buildings, fixtures, and appurtenances for use by the state or an agency, as authorized by the Legislature through an appropriation act, other legislation, or statute, subject to Subsection (1)(c);
    - (iv) except as otherwise provided by statute, hold title to all real property, buildings, fixtures, and appurtenances owned by the state or an agency;

- (v) collect and maintain all deeds, abstracts of title, and all other documents evidencing title to or an interest in property belonging to the state or to the state's departments, except institutions of higher education and the trust lands administration;
  - (vi)
    - (A) periodically conduct a market analysis of proposed rates and fees; and
    - (B) include in a market analysis a comparison of the division's rates and fees with the rates and fees of other public or private sector providers of comparable services, if rates and fees for comparable services are reasonably available;
  - (vii) fulfill the division's responsibilities under Part 10, Energy Conservation and Efficiency, including responsibilities:
    - (A) to implement the state building energy efficiency program under Section 63A-5b-1002; and
    - (B) related to the approval of loans from the State Facility Energy Efficiency Fund under Section 63A-5b-1003;
  - (viii) convey, lease, or dispose of the real property, water rights, or water shares associated with the Utah State Developmental Center if directed to do so by the Utah State Developmental Center board, as provided in Subsection 26B-6-507(2); and
  - (ix) take all other action that the division is required to do under this chapter or other applicable statute.
- (b) In making an allocation of space under Subsection (1)(a)(i), the division shall conduct one or more studies to determine the actual needs of each agency.
- (c) The division may, without legislative approval, acquire title to real property for use by the state or an agency if the acquisition cost does not exceed \$500,000.
- (2) The division may:
- (a) sue and be sued;
  - (b) as authorized by the Legislature, buy, lease, or otherwise acquire, by exchange or otherwise, and hold real or personal property necessary for the discharge of the division's duties; and
  - (c) take all other action necessary for carrying out the purposes of this chapter.
- (3)
- (a) The division may not supervise or control the allocation of space for an entity in the public education system.
  - (b) The supervision and control of the legislative area is reserved to the Legislature.
  - (c) The supervision and control of capitol hill facilities and capitol hill grounds is reserved to the State Capitol Preservation Board.
  - (d)
    - (i) Subject to Subsection (3)(d)(ii), the supervision and control of the allocation of space for an institution of higher education is reserved to the Utah Board of Higher Education.
    - (ii) The Utah Board of Higher Education shall consult and cooperate with the division in the establishment and enforcement of standards for the supervision and control of the allocation of space for an institution of higher education.
  - (e)
    - (i) Subject to Subsection (3)(e)(ii), the supervision and control of the allocation of space for the courts of record listed in Subsection 78A-1-101(1) is reserved to the Administrative Office of the Courts referred to in Subsection 78A-2-108(3).
    - (ii) The Administrative Office of the Courts shall consult and cooperate with the division in the establishment and enforcement of standards for the supervision and control of the allocation of space for the courts of record listed in Subsection 78A-1-101(1).

- (4) Before the division charges a rate, fee, or other amount for a service provided by the division's internal service fund to an executive branch agency, or to a service subscriber other than an executive branch agency, the division shall:
  - (a) submit an analysis of the proposed rate, fee, or other amount to the rate committee created in Section 63A-1-114; and
  - (b) obtain the approval of the Legislature as required by Section 63J-1-410 or 63J-1-504.

Amended by Chapter 329, 2023 General Session

**Effective 7/1/2024**

**63A-5b-303 Duties and authority of division.**

- (1)
    - (a) The division shall:
      - (i) subject to Subsection (1)(b), supervise and control the allocation of space, in accordance with legislative directive through annual appropriations acts, other legislation, or statute, to agencies in all buildings or space owned, leased, or rented by or to the state, except as provided in Subsection (3) or as otherwise provided by statute;
      - (ii) assure the efficient use of all building space under the division's supervision and control;
      - (iii) acquire title to all real property, buildings, fixtures, and appurtenances for use by the state or an agency, as authorized by the Legislature through an appropriation act, other legislation, or statute, subject to Subsection (1)(c);
      - (iv) except as otherwise provided by statute, hold title to all real property, buildings, fixtures, and appurtenances owned by the state or an agency;
      - (v) collect and maintain all deeds, abstracts of title, and all other documents evidencing title to or an interest in property belonging to the state or to the state's departments, except institutions of higher education and the trust lands administration;
    - (vi)
      - (A) periodically conduct a market analysis of proposed rates and fees; and
      - (B) include in a market analysis a comparison of the division's rates and fees with the rates and fees of other public or private sector providers of comparable services, if rates and fees for comparable services are reasonably available;
    - (vii) fulfill the division's responsibilities under Part 10, Energy Conservation and Efficiency, including responsibilities:
      - (A) to implement the state building energy efficiency program under Section 63A-5b-1002; and
      - (B) related to the approval of loans from the State Facility Energy Efficiency Fund under Section 63A-5b-1003;
    - (viii) convey, lease, or dispose of the real property, water rights, or water shares associated with the Utah State Developmental Center if directed to do so by the Utah State Developmental Center board, as provided in Subsection 26B-6-507(2); and
    - (ix) take all other action that the division is required to do under this chapter or other applicable statute.
  - (b) In making an allocation of space under Subsection (1)(a)(i), the division shall conduct one or more studies to determine the actual needs of each agency.
  - (c) The division may, without legislative approval, acquire title to real property for use by the state or an agency if the acquisition cost does not exceed \$500,000.
- (2) The division may:
  - (a) sue and be sued;

- (b) as authorized by the Legislature, buy, lease, or otherwise acquire, by exchange or otherwise, and hold real or personal property necessary for the discharge of the division's duties; and
  - (c) take all other action necessary for carrying out the purposes of this chapter.
- (3)
- (a) The division may not supervise or control the allocation of space for an entity in the public education system.
  - (b) The supervision and control of the legislative area is reserved to the Legislature.
  - (c) The supervision and control of capitol hill facilities and capitol hill grounds is reserved to the State Capitol Preservation Board.
  - (d)
    - (i) Subject to Subsection (3)(d)(ii), the supervision and control of the allocation of space for an institution of higher education is reserved to the Utah Board of Higher Education.
    - (ii) The Utah Board of Higher Education shall consult and cooperate with the division in the establishment and enforcement of standards for the supervision and control of the allocation of space for an institution of higher education.
  - (e)
    - (i) Subject to Subsection (3)(e)(ii), the supervision and control of the allocation of space for the courts of record listed in Subsection 78A-1-101(1) is reserved to the Administrative Office of the Courts described in Section 78A-2-108.
    - (ii) The Administrative Office of the Courts shall consult and cooperate with the division in the establishment and enforcement of standards for the supervision and control of the allocation of space for the courts of record listed in Subsection 78A-1-101(1).
- (4) Before the division charges a rate, fee, or other amount for a service provided by the division's internal service fund to an executive branch agency, or to a service subscriber other than an executive branch agency, the division shall:
- (a) submit an analysis of the proposed rate, fee, or other amount to the rate committee created in Section 63A-1-114; and
  - (b) obtain the approval of the Legislature as required by Section 63J-1-410 or 63J-1-504.

Amended by Chapter 329, 2023 General Session

Amended by Chapter 394, 2023 General Session

**63A-5b-304 Agencies authorized to hold title -- Transfer of real property to a government entity.**

- (1) As used in this section:
- (a) "Agency property" means real property, as described in Subsection (2), that:
    - (i) is owned by a title agency; and
    - (ii) the title agency no longer uses or needs.
  - (b) "Government entity" means:
    - (i) a local government entity, as defined in Section 63A-5b-901; or
    - (ii) a state agency, as defined in Section 63A-5b-901.
  - (c) "Title agency" means an agency listed in Subsection (2).
- (2) Notwithstanding Section 63A-5b-303, an agency may hold title to real property that the agency occupies for a purpose other than the agency's administrative offices, if the agency is:
- (a) the Department of Transportation;
  - (b) the Department of Natural Resources;
  - (c) the Department of Workforce Services;
  - (d) the Division of Forestry, Fire, and State Lands;

- (e) the Utah National Guard;
  - (f) an area vocational center or other institution administered by the State Board of Education;
  - (g) the trust lands administration; or
  - (h) an institution of higher education.
- (3) A title agency is not required to obtain an appraisal of agency property the title agency intends to transfer to a government entity if:
- (a) the director of the title agency determines that the transfer is in the best interest of the title agency and the state; and
  - (b) the government entity to which ownership of the agency property is transferred will use the property for a public purpose.
- (4) Subsection (3) does not apply if the title agency is required by law to receive fair market value in exchange for a transfer of agency property to a government entity.

Amended by Chapter 200, 2023 General Session

### **63A-5b-305 Duties and authority of director.**

- (1) The director shall:
- (a) administer the division's duties and responsibilities;
  - (b) report all property acquired by the state, except property acquired by an institution of higher education or the trust lands administration, to the director of the Division of Finance for inclusion in the state's financial records;
  - (c) after receiving the notice required under Subsection 10-2-419(3)(b), file a written protest at or before the public hearing under Subsection 10-2-419(2)(b), if:
    - (i) it is in the best interest of the state to protest the boundary adjustment; or
    - (ii) the Legislature instructs the director to protest the boundary adjustment; and
  - (d) take all other action that the director is required to take under this chapter or other applicable statute.
- (2) The director may:
- (a) create forms and make policies necessary for the division or director to perform the division or director's duties;
  - (b)
    - (i) hire or otherwise procure assistance and service, professional, skilled, or otherwise, necessary to carry out the director's duties under this chapter; and
    - (ii) expend funds provided for the purpose described in Subsection (2)(b)(i) through annual operation budget appropriations or from other nonlapsing project funds;
  - (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules necessary for the division or director to perform the division or director's duties; and
  - (d) take all other action necessary for carrying out the purposes of this chapter.

Amended by Chapter 435, 2023 General Session

## **Part 4 Development of Capital Facilities**

### **63A-5b-401 Definitions.**

As used in this part:

- (1)
  - (a) "Capital development project" means:
    - (i) a remodeling or site or utility improvement project with a total cost of \$3,500,000 or more;
    - (ii) a new facility with a construction cost of \$500,000 or more; or
    - (iii) a purchase of real property if an appropriation is requested and made for the purchase.
  - (b) "Capital development project" does not include a capital improvement project.
- (2) "Capital improvement project" means:
  - (a) a remodeling, alteration, replacement, repair, or site or utility improvement project:
    - (i) with a total cost of less than \$3,500,000; or
    - (ii)
      - (A) with a total cost of \$3,500,000 or more; and
      - (B) that will be paid for with funds that are not state funds;
  - (b) a utility infrastructure improvement project that:
    - (i) has a total cost of less than \$7,000,000;
    - (ii) consists of two or more projects that, if done separately, would each cost less than \$3,500,000; and
    - (iii) the division determines is more cost effective or feasible to be completed as a single project; or
  - (c) a new facility with a total construction cost of less than \$500,000.
- (3)
  - (a) "New facility" means a new building constructed on state property regardless of the source of the funding that pays for construction of the new building.
  - (b) "New facility" includes:
    - (i) an addition to an existing building; and
    - (ii) the enclosure of space that was not previously fully enclosed.
  - (c) "New facility" does not include:
    - (i) the replacement of state-owned space that is demolished or that is otherwise removed from state use, if the total construction cost of the replacement space is less than \$3,500,000; or
    - (ii) the construction of facilities that do not fully enclose a space.
- (4) "Replacement cost" means, as determined by the Division of Risk Management:
  - (a) for state facilities, excluding auxiliary facilities as defined by the director, the cost to replace those facilities; and
  - (b) for infrastructure, as defined by the director, the cost to replace the infrastructure.
- (5) "State funds" means public money appropriated by the Legislature.

Enacted by Chapter 152, 2020 General Session

**63A-5b-402 Capital development process -- Approval requirements.**

- (1) Except as provided in Section 63A-5b-404, the division shall, on behalf of all agencies, submit capital development project recommendations and priorities to the Legislature for approval and prioritization.
- (2) An agency that requests an appropriation for a capital development project shall submit to the division for transmission to the Legislature a capital development project request and a feasibility study relating to the capital development project.
- (3)
  - (a) The division shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that establish standards and requirements for a capital development project request and feasibility study.

- (b) The rules shall include:
  - (i) a deadline by which an agency is required to submit a capital development project request;
  - (ii) conditions under which an agency may modify the agency's capital development project request after the agency submits the request, and requirements applicable to a modification; and
  - (iii) requirements for the contents of a feasibility study, including:
    - (A) the need for the capital development project;
    - (B) the appropriateness of the scope of the capital development project;
    - (C) any private funding for the capital development project; and
    - (D) the economic and community impacts of the capital development project.
- (4) The division shall verify the completion and accuracy of a feasibility study that an agency submits under Subsection (2) prior to submitting capital development project recommendations and priorities under Subsection (1).

Amended by Chapter 421, 2022 General Session

**63A-5b-403 Institutions of higher education -- Capital development projects -- Dedicated and nondedicated projects -- Recommendations and prioritization.**

- (1) As used in this section:
  - (a) "Dedicated project" has the same meaning as that term is defined in:
    - (i) Section 53B-2a-101, for a capital development project under Title 53B, Chapter 2a, Technical Education; or
    - (ii) Section 53B-22-201, for a capital development project under Title 53B, Chapter 22, Higher Education Capital Projects.
  - (b) "Nondedicated project" has the same meaning as that term is defined in:
    - (i) Section 53B-2a-101, for a capital development project under Title 53B, Chapter 2a, Technical Education; or
    - (ii) Section 53B-22-201, for a capital development project under Title 53B, Chapter 22, Higher Education Capital Projects.
- (2)
  - (a) The division shall submit recommendations to the Legislature in accordance with:
    - (i) Section 53B-2a-117, for a dedicated project under Title 53B, Chapter 2a, Technical Education; or
    - (ii) Section 53B-22-204, for a dedicated project under Title 53B, Chapter 22, Higher Education Capital Projects.
  - (b) A dedicated project is not subject to prioritization by the division.
- (3)
  - (a) The division shall prioritize nondedicated projects in accordance with:
    - (i) Section 63A-5b-402; and
    - (ii)
      - (A) Section 53B-2a-117, for a nondedicated project under Title 53B, Chapter 2a, Technical Education; or
      - (B) Section 53B-22-204, for a nondedicated project under Title 53B, Chapter 22, Higher Education Capital Projects.
  - (b) In the division's scoring process for prioritizing nondedicated projects, the division shall give more weight to a request that is designated as a higher priority by the Utah Board of Higher Education than a request that is designated as a lower priority by the Utah Board of Higher

Education only for determining the order of prioritization among requests submitted by the Utah Board of Higher Education.

- (4) The division shall require that an institution of higher education that submits a request for a capital development project address whether and how, as a result of the project, the institution of higher education will:
  - (a) offer courses or other resources that will help meet demand for jobs, training, and employment in the current market and the projected market for the next five years;
  - (b) respond to individual skilled and technical job demand over the next three, five, and 10 years;
  - (c) respond to industry demands for trained workers;
  - (d) help meet commitments made by the Governor's Office of Economic Opportunity, including relating to training and incentives;
  - (e) respond to changing needs in the economy; and
  - (f) respond to demands for online or in-class instruction, based on demographics.
- (5) The division shall:
  - (a)
    - (i) assist institutions of higher education in providing the information required by Subsection (4); and
    - (ii) verify the completion and accuracy of the information submitted by an institution of higher education under Subsection (4);
  - (b) assist the Utah Board of Higher Education to fulfill the requirements of Section 53B-2a-112 in connection with the finding that the division is required to make under Subsection 53B-2a-112(4)(b); and
  - (c) assist the Utah Board of Higher Education in submitting a list of dedicated projects to the division for approval and nondedicated projects to the division for recommendation and prioritization pursuant to Section 53B-22-204.

Amended by Chapter 421, 2022 General Session

**63A-5b-404 Exceptions to requirement of legislative approval for capital development projects.**

- (1)
  - (a) Except as provided in this section, a capital development project may not be constructed on state property without legislative approval.
  - (b) The division may authorize a capital development project on state property without legislative approval only as provided in this section.
- (2)
  - (a) Legislative approval is not required for a capital development project that consists of the design or construction of a new facility if:
    - (i) the division determines that the requesting agency has provided adequate assurance that state funds will not be used for the design or construction of the facility;
    - (ii) the agency provides to the division a written document, signed by the head of the agency:
      - (A) stating that funding or a revenue stream is in place, or will be in place before the project is completed, to ensure that increased state funding will not be required to cover the cost of operations and maintenance for the resulting facility or for immediate or future capital improvements; and
      - (B) detailing the source of the funding that will be used for the cost of operations and maintenance and for immediate and future capital improvements to the resulting facility; and



- (iii) the division determines that the use of the state property:
  - (A) is appropriate and consistent with the master plan for the property; and
  - (B) will not create an adverse impact on the state.
- (b) For a facility constructed without legislative approval under Subsection (2)(a), an agency may not request:
  - (i) increased state funds for operations and maintenance; or
  - (ii) increased state capital improvement funding.
- (3) Legislative approval is not required for:
  - (a) a facility:
    - (i) to be built with funds other than state funds and owned by an entity other than a state entity; and
    - (ii) that is within a research park area at the University of Utah or Utah State University;
  - (b) a facility to be built at This is the Place State Park by the This is the Place Foundation with funds of the This is the Place Foundation or with donated services or materials and that may include grant money from the state;
  - (c) a project that:
    - (i) is funded by the Uintah Basin Revitalization Fund or the Navajo Revitalization Fund; and
    - (ii) does not provide a new facility for an agency or institution of higher education; or
  - (d) a project on school and institutional trust lands that:
    - (i) is funded by the trust lands administration from the Land Grant Management Fund; and
    - (ii) does not fund construction of a new facility for an agency or institution of higher education.
- (4)
  - (a) Legislative approval is not required for a capital development project to be built for the Department of Transportation resulting from:
    - (i) an exchange of real property under Section 72-5-111; or
    - (ii) a sale or exchange of real property from a maintenance facility if the proceeds from the sale of the real property are used for, or the real property is exchanged for:
      - (A) real property for another maintenance facility; or
      - (B) another maintenance facility, including improvements for a maintenance facility.
  - (b) If the Department of Transportation approves a sale or exchange under Subsection (4)
    - (a) for a capital development project subject to the board's approval, the Department of Transportation shall notify the president of the Senate, the speaker of the House of Representatives, and the cochairs of the Infrastructure and General Government Appropriations Subcommittee of the Legislature's Joint Appropriations Committee about any new facilities to be built or improved.

Amended by Chapter 421, 2022 General Session

**63A-5b-405 Capital improvement projects.**

- (1)
  - (a) On or before January 15 of each year, the division shall, on behalf of all agencies, submit a list of anticipated capital improvement project requirements to the Legislature.
  - (b) The division shall ensure that the capital improvements project list identifies:
    - (i) each single capital improvement project that costs more than \$1,000,000;
    - (ii) each multiple capital improvement project within a single building or facility that collectively costs more than \$1,000,000;
    - (iii) each single capital improvement project that will be constructed over multiple years with a yearly cost of \$1,000,000 or more and an aggregate cost of more than \$3,500,000;

- (iv) each multiple capital improvement project within a single building or facility with a yearly cost of \$1,000,000 or more and an aggregate cost of more than \$3,500,000;
  - (v) each single capital improvement project previously reported to the Legislature as a capital improvement project under \$1,000,000 that, because of an increase in costs or scope of work, will now cost more than \$1,000,000;
  - (vi) each multiple capital improvement project within a single building or facility previously reported to the Legislature as a capital improvement project under \$1,000,000 that, because of an increase in costs or scope of work, will now cost more than \$1,000,000; and
  - (vii) each capital improvement project described in Subsection 63A-5b-401(3)(c).
- (2)
- (a) Unless otherwise directed by the Legislature, the division shall prioritize capital improvement projects on the capital improvement project list up to the level of appropriation made by the Legislature.
  - (b) In prioritizing capital improvement projects, the division shall consider the results of facility evaluations completed by an architect or engineer as stipulated by the division's facilities maintenance standards.
  - (c) In prioritizing capital improvement projects, the division shall allocate at least 90% of the funds that the Legislature appropriates for capital improvement projects to:
    - (i) capital improvement projects that address:
      - (A) a structural issue;
      - (B) fire safety;
      - (C) a code violation; or
      - (D) any issue that impacts health and safety;
    - (ii) capital improvement projects that upgrade:
      - (A) an HVAC system;
      - (B) an electrical system;
      - (C) essential equipment;
      - (D) an essential building component; or
      - (E) infrastructure, including a utility tunnel, water line, gas line, sewer line, roof, parking lot, or road; or
    - (iii) capital improvement projects that demolish and replace an existing building that is in extensive disrepair and cannot be fixed by repair or maintenance.
  - (d) In prioritizing capital improvement projects, the division may not allocate more than 10% of the funds that the Legislature appropriates for capital improvement projects to:
    - (i) remodeling and aesthetic upgrades to meet state programmatic needs; or
    - (ii) construct an addition to an existing building or facility.
- (3) The division may require an entity that benefits from a capital improvement project to repay the capital improvement funds from savings that result from the capital improvement project.
- (4) The division may provide capital improvement project funding to a single project or to multiple projects within a single building or facility, even if the total cost of the project or multiple projects is \$3,500,000 or more, if:
- (a) the capital improvement project is a project described in Subsection 63A-5b-401(3)(c); and
  - (b) the Legislature has not refused to fund the project with capital improvement project funds.
- (5) In prioritizing and allocating capital improvement project funding, the division shall comply with the requirement in Subsection 63B-23-101(2)(f).
- (6)
- (a) In developing the capital improvement project list and priorities, the division shall require each agency that requests an appropriation for a capital improvement project to:

- (i) submit a capital improvement project request; and
  - (ii) complete and submit a project scoping document.
  - (b) A project scoping document under Subsection (6)(a)(ii) shall address:
    - (i) the need for the capital improvement project; and
    - (ii) the appropriateness of the scope of the capital improvement project.
  - (c) The division shall verify the completion and accuracy of a project scoping document that an agency submits under Subsection (6)(a)(ii).
- (7) Except for this Subsection (7), this section does not apply to a capital improvement project described in Subsection 63A-5b-401(2)(a)(ii).

Renumbered and Amended by Chapter 152, 2020 General Session

**63A-5b-406 Limitations on new projects.**

- (1) The Legislature may authorize:
  - (a) the total square footage to be occupied by each agency; and
  - (b) the total square footage and total cost of lease space for each agency.
- (2) If construction of a new building or facility will require an immediate or future increase in state funding for operations and maintenance or for capital improvements, the Legislature may not authorize the new building or facility until the Legislature appropriates funds for:
  - (a) the portion of operations and maintenance, if any, that will require an immediate or future increase in state funding; and
  - (b) the portion of capital improvements, if any, that will require an immediate or future increase in state funding.
- (3)
  - (a) Except as provided in Subsections (3)(b) and (c), the Legislature may not fund the design or construction of any new capital development project, except to complete the funding of a project for which partial funding has been previously provided, until the Legislature has appropriated 1.1% of the replacement cost of existing state facilities and infrastructure to capital improvements.
  - (b) If the Legislature determines that there exists an Income Tax Fund budget deficit, as defined in Section 63J-1-312, or a General Fund budget deficit, as defined in Section 63J-1-312, the Legislature may, in eliminating the deficit, reduce the amount appropriated to capital improvements to 0.9% of the replacement cost of state buildings and infrastructure.
  - (c) Subsection (3)(a) does not apply to a dedicated project as defined in Section 63A-5b-403.
- (4)
  - (a)
    - (i) Except as provided in Subsection (4)(a)(ii), the Legislature may not fund the design and construction of a new facility in phases over more than one year unless the Legislature approves the funding for both the design and construction by a vote of two-thirds of all the members elected to each house.
    - (ii) Subsection (4)(a)(i) does not apply to a dedicated project as defined in Section 63A-5b-403.
  - (b) An agency shall receive approval from the director before the agency begins programming for a new facility:
    - (i) that requires legislative approval; or
    - (ii) to be built under Subsection 63A-5b-404(2).
  - (c) The division or an agency may fund the programming of a new facility before the Legislature makes an appropriation for the new facility under Subsection (4)(a).
- (5)

- (a) The director, with the approval of the Office of the Legislative Fiscal Analyst, shall develop standard forms to present capital development project and capital improvement project cost summary data.
- (b) The director shall:
  - (i) within 30 days after the completion of each capital development project, submit cost summary data for the project on the standard form to the Office of the Legislative Fiscal Analyst; and
  - (ii) upon request, submit cost summary data for a capital improvement project to the Office of the Legislative Fiscal Analyst on the standard form.
- (6)
  - (a) After the Legislature approves capital development project priorities under Section 63A-5b-402 and capital improvement project priorities under Section 63A-5b-405, the director may reallocate capital development project or capital improvement project funds to address a critical need for a capital improvement project:
    - (i) if an emergency arises that creates an unforeseen and critical need for the capital improvement project; and
    - (ii) notwithstanding the requirements of Title 63J, Chapter 1, Budgetary Procedures Act.
  - (b) The director shall report any changes the director makes in capital development project or capital improvement project allocations approved by the Legislature to:
    - (i) the Office of the Legislative Fiscal Analyst within 30 days after the reallocation; and
    - (ii) the Legislature at the Legislature's next annual general session.

Amended by Chapter 456, 2022 General Session

**63A-5b-407 State Agency Capital Development Fund -- Creation -- Process.**

- (1)
  - (a) There is created a capital projects fund known as the State Agency Capital Development Fund.
  - (b) The State Agency Capital Development Fund and this section do not apply to an institution of higher education.
- (2) The State Agency Capital Development Fund is funded from the following sources:
  - (a) one-time appropriations made to the State Agency Capital Development Fund by the Legislature;
  - (b) ongoing appropriations made by the Legislature; or
  - (c) revenue received from the sale, lease, or disposition of any state agency building or property associated with the implementation of the Statewide Master Plan for State Agencies as described in Subsection (7).
- (3) Subject to Subsection (4), and subject to appropriation by the Legislature, the division may use the money deposited into the State Agency Capital Development Fund for capital development projects, capital improvement projects, and to design, renovate, or construct facilities for state agencies.
- (4)
  - (a) Before the division spends or commits money from the State Agency Capital Development Fund, in accordance with Sections 63A-5b-402, 63A-5b-405, and 63A-5b-501, the division shall present to the Infrastructure and General Government Appropriations Subcommittee:
    - (i) a description of each project for which the division will spend the money; and
    - (ii) the amount of money needed for each project.

- (b) Following a presentation described in Subsection (4)(a), the Infrastructure and General Government Appropriations Subcommittee shall recommend to the Legislature appropriations of money from the State Agency Capital Development Fund to the division for approved projects in the division's plan.
- (c) In accordance with this section, the division is required to receive legislative approval through an appropriations act in order to expend money in the State Agency Capital Development Fund for a capital development project.
- (5) In the 2024 General Session of the Legislature, and each year thereafter, and in accordance with Sections 63A-5b-402, 63A-5b-405, and 63A-5b-501, the division shall present a five-year building plan to the Infrastructure and General Government Appropriations Subcommittee that describes the division's anticipated plan for designing, renovating, or building state agency facilities.
- (6) The division may not submit a request to the Infrastructure and General Government Appropriations Subcommittee for funding from the State Agency Capital Development Fund unless:
  - (a) the project complies with the Statewide Master Plan for State Agencies; and
  - (b) the division first obtains approval from the Governor's Office of Planning and Budget.
- (7) If a building is vacated by an agency and the agency moves to another building, proceeds from the sale or lease of the vacated building:
  - (a) may not be used by the agency or otherwise absorbed into the agency's budget; and
  - (b) shall be deposited into the State Agency Capital Development Fund described in this section.

Enacted by Chapter 369, 2023 General Session

## **Part 5 Planning and Programming**

### **63A-5b-501 Five-year building plan.**

- (1) The director shall:
  - (a) in cooperation with agencies, prepare a master plan of structures built or contemplated;
  - (b) submit to the governor and the Legislature a comprehensive five-year building plan for the state containing the information required by Subsection (2);
  - (c) amend and keep current the five-year building plan that complies with the requirements described in Subsection (2), for submission to the governor and subsequent legislatures; and
  - (d) as part of the long-range plan, recommend to the governor and Legislature any changes in the law that are necessary to ensure an effective, well-coordinated building program for all agencies.
- (2)
  - (a) The director shall ensure that the five-year building plan required by Subsection (1)(b) includes:
    - (i) a list that prioritizes construction of new buildings for all structures built or contemplated based upon each agency's present and future needs;
    - (ii) information and space use data for all state-owned and leased facilities;
    - (iii) substantiating data to support the adequacy of any projected plans;
    - (iv) a summary of all statewide contingency reserve and project reserve balances as of the end of the most recent fiscal year;

- (v) a list of buildings that have completed a comprehensive facility evaluation by an architect or engineer or are scheduled to have an evaluation;
  - (vi) for those buildings that have completed the evaluation, the estimated costs of needed improvements; and
  - (vii) for projects recommended in the first two years of the five-year building plan:
    - (A) detailed estimates of the cost of each project;
    - (B) the estimated cost to operate and maintain the building or facility on an annual basis;
    - (C) the cost of capital improvements to the building or facility, estimated at 1.1% of the replacement cost of the building or facility, on an annual basis;
    - (D) the estimated number of new agency full-time employees expected to be housed in the building or facility;
    - (E) the estimated cost of new or expanded programs and personnel expected to be housed in the building or facility;
    - (F) the estimated lifespan of the building with associated costs for major component replacement over the life of the building; and
    - (G) the estimated cost of any required support facilities.
  - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director may make rules prescribing the format for submitting the information required by this Subsection (2).
- (3) To provide adequate information to enable the director to make a recommendation described in Subsection (1), an agency requesting new full-time employees for the next fiscal year shall report those anticipated requests to the director at least 90 days before the annual general session in which the request is made.

Enacted by Chapter 152, 2020 General Session

**63A-5b-502 Programming.**

- (1) As used in this section:
- (a) "Program document" means a final document that contains programming information.
  - (b) "Programming" means services to define the scope and purpose of an anticipated project, and may include:
    - (i) researching criteria applicable to the scope and purpose of an anticipated project;
    - (ii) identifying the scale of the project and the type of facilities and the level of specialized functions that will be required;
    - (iii) identifying and prioritizing values and goals that will impact the project, including institutional purposes, growth objectives, and cultural, technological, temporal, aesthetic, symbolic, economic, environmental, safety, sustainability, and other relevant criteria;
    - (iv) evaluating functional efficiency, user comfort, building economics, environmental sustainability, and visual quality;
    - (v) identifying objectives for the project, including such elements as image, efficiencies, functionality, cost, and schedule;
    - (vi) identifying and evaluating the constraints that will have an impact on the project such as legal requirements, financial constraints, location, access, visibility, and building services;
    - (vii) developing standards such as area allowances, space allocation, travel distances, and furniture and equipment requirements;
    - (viii) establishing general space quality standards related to such elements as lighting levels, equipment performance, acoustical requirements, security, and aesthetics;
    - (ix) identifying required spaces;

- (x) establishing sizes and relationships;
  - (xi) establishing space efficiency factors or the ratio of net square footage to gross square footage; and
  - (xii) documenting particular space requirements such as special HVAC, plumbing, power, lighting, acoustical, furnishings, equipment, or security needs.
- (2) A program document may:
- (a) incorporate written and graphic materials; and
  - (b) include:
    - (i) an executive summary;
    - (ii) documentation of the methodology used to develop the programming;
    - (iii) value and goal statements;
    - (iv) relevant facts upon which the programming was based;
    - (v) conclusions derived from data analysis;
    - (vi) relationship diagrams;
    - (vii) flow diagrams;
    - (viii) matrices identifying space allocations and relationships;
    - (ix) space listings by function and size; and
    - (x) space program sheets, including standard requirements and special HVAC, plumbing, power, lighting, acoustical, furnishings, equipment, or security needs.
- (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director may make rules:
- (a) establishing the types of projects for which programming and a program document are required;
  - (b) establishing the scope of programming required for defined categories of projects;
  - (c) establishing the circumstances under which an agency must obtain authorization from the director to engage in programming;
  - (d) governing the funding of programming;
  - (e) relating to the administration of programming; and
  - (f) regarding any restrictions that may be imposed on a person involved in programming from participating in the preparation of construction documents for a project that is the subject of the programming.

Enacted by Chapter 152, 2020 General Session

**63A-5b-503 Planning Fund expenditures authorized -- Ceiling on expenditures -- Recovery.**

- (1) The Planning Fund shall be used to make payments for engineering, architectural, and other planning expenses necessary to make a meaningful cost estimate of any facility or improvement with a demonstrable or immediate need.
- (2) The director may make expenditures from the Planning Fund in order to provide planning information to the governor and the Legislature, up to a maximum of \$350,000 in outstanding Planning Fund commitments.
- (3)
  - (a) The director shall authorize all payments made from the Planning Fund.
  - (b) Payments from the Planning Fund shall be a charge on the project for which they were drawn.
  - (c) If the Legislature appropriates money for a building project for which planning costs have previously been paid from the Planning Fund, the director shall credit that amount to the Planning Fund.
- (4)

- (a) The director may expend money from the Planning Fund for architectural and engineering services incident to the planning and preparation of applications for funds on construction financed by other than state sources, including federal grants.
- (b) Upon approval of financing referred to in Subsection (4)(a), the director shall reimburse to the Planning Fund the money spent for architectural and engineering services.

Amended by Chapter 421, 2022 General Session

## **Part 6**

### **Design and Construction**

#### **63A-5b-601 Definitions.**

As used in this part:

- (1)
  - (a) "Facility" means any building, structure, or other improvement that is constructed:
    - (i) on property that the state or any of the state's departments, commissions, institutions, or agencies owns; or
    - (ii) by the state or any of the state's departments, commissions, institutions, or agencies on property that the state does not own.
  - (b) "Facility" does not mean an unoccupied structure that is a component of the state highway system.
- (2) "Local government" means the county, municipality, or local school district that would have jurisdiction to act as the compliance agency if the division did not have jurisdiction to act as the compliance agency.

Amended by Chapter 421, 2022 General Session

#### **63A-5b-602 Design criteria, standards, and procedures.**

- (1) The director shall establish design criteria, standards, and procedures for the planning, design, and construction of a new facility and for improvements to an existing facility, including life-cycle costing, cost-effectiveness studies, and other methods and procedures that address:
  - (a) the need for the facility;
  - (b) the effectiveness of the facility's design;
  - (c) the efficiency of energy use; and
  - (d) the usefulness of the facility over the facility's lifetime.
- (2) Before proceeding with construction, the director and the officials charged with the administration of the affairs of the particular agency shall approve the location, design, plans, and specifications.
- (3) The director shall prepare or have prepared by one or more private persons the designs, plans, and specifications for the projects administered by the division.
- (4) Before construction may begin, the director shall review the design of projects exempted from the division's administration under Section 63A-5b-604 to determine if the design:
  - (a) complies with any restrictions placed on the project by the director; and
  - (b) is appropriate for the purpose and setting of the project.
- (5) Notwithstanding the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, the director may:



- (a) accelerate the design of a project funded by an appropriation act passed by the Legislature in the Legislature's annual general session;
- (b) use an unencumbered existing account balance to fund that design work; and
- (c) reimburse the account balance from the amount funded for the project when the appropriation act funding the project becomes effective.

Enacted by Chapter 152, 2020 General Session

**63A-5b-603 Contracting powers of director -- Bids -- Retainage.**

- (1) In accordance with Title 63G, Chapter 6a, Utah Procurement Code, the director may enter into a contract for any work or professional service that the division may do or have done.
- (2)
  - (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director may make rules establishing circumstances under which bids may be modified when all bids for a construction project exceed available funds as determined by the director.
  - (b) In making the rules described in Subsection (2)(a), the director shall provide for the fair and equitable treatment of bidders.
  - (c) The judgment of the director as to the responsibility and qualifications of a bidder is conclusive, except in case of fraud or bad faith.
- (3) The division shall make all payments to the contractor for completed work in accordance with Section 15-6-2 and pay the interest specified in Section 15-6-3 on any payments that are late.
- (4) If the division retains or withholds a payment on a contract with a private contractor to do work for the division, the division shall retain or withhold and release the payment as provided in Section 13-8-5.

Amended by Chapter 421, 2022 General Session

**63A-5b-604 Construction, alteration, and repair of state facilities -- Powers of director -- Exceptions -- Expenditure of appropriations -- Compliance agency role.**

- (1)
  - (a) Except as provided in this section and Section 63A-5b-1101, the director shall exercise direct supervision over the design and construction of all new facilities, and all alterations, repairs, and improvements to existing facilities, if the total project construction cost, regardless of the funding source, is greater than \$100,000.
  - (b) A state entity may exercise direct supervision over the design and construction of all new facilities, and over all alterations, repairs, and improvements to existing facilities, if:
    - (i) the total project construction cost, regardless of the funding sources, is \$100,000 or less; and
    - (ii) the state entity assures compliance with the division's forms and contracts and the division's design, construction, alteration, repair, improvement, and code inspection standards.
- (2) The director may enter into a capital improvement partnering agreement with an institution of higher education that permits the institution of higher education to exercise direct supervision for a capital improvement project with oversight from the division.
- (3)
  - (a) Subject to Subsection (3)(b), the director may delegate control over design, construction, and other aspects of any project to entities of state government on a project-by-project basis.
  - (b) With respect to a delegation of control under Subsection (3)(a), the director may:
    - (i) impose terms and conditions on the delegation that the director considers necessary or advisable to protect the interests of the state; and

- (ii) revoke the delegation and assume control of the design, construction, or other aspect of a delegated project if the director considers the revocation and assumption of control to be necessary to protect the interests of the state.
- (4)
  - (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director may delegate control over design, construction, and all other aspects of any project to entities of state government on a categorical basis for projects within a particular dollar range and a particular project type.
  - (b) Rules adopted by the director under Subsection (4)(a) may:
    - (i) impose the terms and conditions on categorical delegation that the director considers necessary or advisable to protect the interests of the state;
    - (ii) provide for the revocation of the delegation on a categorical basis and for the division to assume control of the design, construction, or other aspect of a category of delegated projects or a specific delegated project if the director considers revocation of the delegation and assumption of control to be necessary to protect the interests of the state;
    - (iii) require that a categorical delegation be renewed by the director on an annual basis; and
    - (iv) require the division's oversight of delegated projects.
- (5)
  - (a) A state entity to which project control is delegated under this section shall:
    - (i) assume fiduciary control over project finances;
    - (ii) assume all responsibility for project budgets and expenditures; and
    - (iii) receive all funds appropriated for the project, including any contingency funds contained in the appropriated project budget.
  - (b) Notwithstanding a delegation of project control under this section, a state entity to which control is delegated is required to comply with the division's codes and guidelines for design and construction.
  - (c) A state entity to which project control is delegated under this section may not access, for the delegated project, the division's statewide contingency reserve and project reserve authorized in Section 63A-5b-609.
  - (d) For a facility that will be owned, operated, maintained, and repaired by an entity that is not an agency and that is located on property that the state owns or leases as a tenant, the director may authorize the facility's owner to administer the design and construction of the project relating to that facility.
- (6)
  - (a) A project for the construction of a new facility and a project for alterations, repairs, and improvements to an existing facility are not subject to Subsection (1) if the project:
    - (i) occurs on property under the jurisdiction of the State Capitol Preservation Board;
    - (ii) is within a designated research park at the University of Utah or Utah State University;
    - (iii) occurs within the boundaries of This is the Place State Park and is administered by This is the Place Foundation; or
    - (iv) is for the creation and installation of art under Title 9, Chapter 6, Part 4, Utah Percent-for-Art Act.
  - (b) Notwithstanding Subsection (6)(a)(iii), the This is the Place Foundation may request the director to administer the design and construction of a project within the boundaries of This is the Place State Park.
- (7)
  - (a) The role of compliance agency under Title 15A, State Construction and Fire Codes Act, shall be filled by:

- (i) the director, for a project administered by the division;
  - (ii) the entity designated by the State Capitol Preservation Board, for a project under Subsection (6)(a)(i);
  - (iii) the local government, for a project that is:
    - (A) not subject to the division's administration under Subsection (6)(a)(ii); or
    - (B) administered by This is the Place Foundation under Subsection (6)(a)(iii);
  - (iv) the compliance agency designated by the director, for a project under Subsection (2), (3), (4), or (5)(d); and
  - (v) for the installation of art under Subsection (6)(a)(iv), the entity that is acting as the compliance officer for the balance of the project for which the art is being installed.
- (b) A local government acting as the compliance agency under Subsection (7)(a)(iii) may:
- (i) only review plans and inspect construction to enforce the state construction code or an approved code under Title 15A, State Construction and Fire Codes Act; and
  - (ii) charge a building permit fee of no more than the amount the local government could have charged if the land upon which the improvements are located were not owned by the state.
- (8)
- (a) The zoning authority of a local government under Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act, or Title 17, Chapter 27a, County Land Use, Development, and Management Act, does not apply to the use of property that the state owns or any improvements constructed on property that the state owns, including improvements constructed by an entity other than a state entity.
  - (b) A state entity controlling the use of property that the state owns shall consider any input received from a local government in determining how the property is to be used.

Amended by Chapter 421, 2022 General Session

**63A-5b-605 Requirement for bidders to list subcontractors -- Changing subcontractors -- Bidders as subcontractors.**

- (1) As used in this section:
- (a) "First-tier subcontractor" means a subcontractor who contracts directly with the prime contractor.
  - (b)
    - (i) "Subcontractor" means a person under contract with a contractor or another subcontractor to provide services or labor for the construction, installation, or repair of an improvement to real property.
    - (ii) "Subcontractor" includes a trade contractor or specialty contractor.
    - (iii) "Subcontractor" does not include a supplier that provides only materials, equipment, or supplies to a contractor or subcontractor.
- (2) The director shall apply the provisions of this section to achieve fair and competitive bidding and to discourage bid-shopping by contractors.
- (3)
- (a)
    - (i)
      - (A) On a public construction project, the director shall, except as provided in Subsection (3)(a)(ii), require the apparent lowest three bidders to submit a list of their first-tier subcontractors indicating each first-tier each subcontractor's name, bid amount, and other information required by rule.

- (B) A bidder that is not one of the apparent lowest three bidders may also submit a list of the bidder's first-tier subcontractors containing the information required by this Subsection (3).
- (ii) A bidder is not required to list a first-tier subcontractor if:
  - (A) the bidder's total bid is less than \$500,000 and the first-tier subcontractor's bid is less than \$20,000; or
  - (B) the bidder's total bid is \$500,000 or more and the first-tier subcontractor's bid is less than \$35,000.
- (b) A bidder shall submit the list required under this section within 24 hours after the bid opening time, not including Saturday, Sunday, and any state holiday.
- (c) A list submitted under this section does not limit the director's right to authorize a change in the listing of any subcontractor.
- (4) The director may not consider a bid submitted by a bidder that fails to submit a list meeting the requirements of this section.
- (5) A bidder shall verify that all subcontractors listed as part of the bidder's bid are licensed as required by state law.
- (6)
  - (a) After 24 hours after the bid opening, a bidder may change the bidder's subcontractors only after:
    - (i) receiving permission from the director; and
    - (ii) establishing:
      - (A) that the change is in the best interest of the state; and
      - (B) the reasons for the change that meet the standards established by the director.
  - (b) If the director approves a change in subcontractors that results in a net lower contract price for subcontracted work, the director may require the bidder to reduce the total of the prime contract to reflect the change.
- (7)
  - (a) A bidder may list the bidder as a subcontractor if:
    - (i) the bidder is currently licensed to perform the portion of the work for which the bidder lists the bidder as a subcontractor; and
    - (ii)
      - (A) the bidder intends to perform the work of a subcontractor; or
      - (B) the bidder intends to obtain a subcontractor at a later date to perform the work because the bidder was unable to obtain a bid from a qualified subcontractor or from a qualified subcontractor at a cost that the bidder considers to be reasonable.
  - (b)
    - (i) If the bidder intends to perform the work of a subcontractor, the director may, by written request, require that the bidder provide the director with information indicating the bidder's:
      - (A) previous experience in the type of work to be performed; and
      - (B) qualifications for performing the work.
    - (ii) A bidder shall respond in writing within five business days after receiving the director's written request under Subsection (7)(b)(i).
    - (iii) If the information a bidder submits under Subsection (7)(b)(ii) causes the director to reasonably believe that the bidder's performance of the portion of the work is likely to result in a substandard finished product, the director shall:
      - (A) require the bidder to use a subcontractor for the portion of the work in question and obtain the subcontractor bid under the supervision of the director; or
      - (B) reject the bidder's bid.
- (8)

- (a) If a bidder intends to obtain a subcontractor at a later date to perform work described in the bidder's bid, the bidder shall provide documentation with the subcontractor list required under this section:
  - (i) describing the bidder's efforts to obtain a bid of a qualified subcontractor at a reasonable cost; and
  - (ii) explaining why the bidder was unable to obtain a qualified subcontractor bid.
- (b) If a bidder who intends to obtain a subcontractor at a later date to perform the work described in a bid is awarded a contract, the director:
  - (i) shall supervise the bidder's efforts to obtain a qualified subcontractor bid; and
  - (ii) may not adjust the amount of the contract awarded in order to reflect the actual amount of the subcontractor's bid.
- (9) The division may not disclose any subcontractor bid amounts obtained under this section until the division has awarded the project to a contractor.
- (10) In addition to all other reasons allowed by statute or rule, the director may reject all bids if all of the bidders whose bids are within the budget of the project fail to submit a subcontractor list as required under this section.

Renumbered and Amended by Chapter 152, 2020 General Session

**63A-5b-606 Dispute resolution process -- Penalties for fraud or bad faith claim.**

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director shall make rules for the division establishing a process for resolving disputes involved with contracts under the division's procurement authority.
- (2) The director shall consider, and the rules may include:
  - (a) requirements regarding preliminary resolution efforts between the parties directly involved with the dispute;
  - (b) requirements for the filing of a claim, including notification, time frames, and documentation;
  - (c) identification of the types of costs eligible for allocation and a method for allocating costs among the parties to the dispute;
  - (d) a required time period, not to exceed 60 days, for the resolution of the claim;
  - (e) a provision for an independent hearing officer, panel, or arbitrator to extend the time period for resolution of the claim by not to exceed 60 additional days for good cause;
  - (f) a provision for the extension of required time periods if the claimant agrees;
  - (g) requirements that decisions be issued in writing;
  - (h) provisions for an administrative appeal of a decision;
  - (i) provisions for the timely payment of claims after resolution of the dispute, including any appeals;
  - (j) a requirement that the final determination resulting from the dispute resolution process provided for in the rules is a final agency action subject to judicial review as provided in Sections 63G-4-401 and 63G-4-402;
  - (k) a requirement that a claim or dispute that does not include a monetary claim against the division or an agent of the division is not limited to the dispute resolution process provided for in this section;
  - (l) requirements for claims and disputes to be eligible for the dispute resolution process under this section;
  - (m) the use of an independent hearing officer or panel or the use of arbitration or mediation; and
  - (n) the circumstances under which a subcontractor may file a claim directly with the division.
- (3) A person pursuing a claim under the process established as provided in this section:

- (a) is bound by the decision reached under this process, subject to any modification of the decision on appeal; and
  - (b) may not pursue a claim, protest, or dispute under the dispute resolution process established in Title 63G, Chapter 6a, Utah Procurement Code.
- (4) A fraudulent misrepresentation made by or bad faith claim pursued by a contractor, subcontractor, or supplier, may be grounds for:
- (a) the director to suspend or debar the contractor, subcontractor, or supplier; or
  - (b) the contractor, subcontractor, or supplier to be disciplined by the Division of Professional and Occupational Licensing.

Amended by Chapter 169, 2022 General Session

**63A-5b-607 Health insurance requirements -- Penalties.**

- (1) As used in this section:
- (a) "Aggregate amount" means the dollar sum of all contracts, change orders, and modifications for a single project.
  - (b) "Change order" means the same as that term is defined in Section 63G-6a-103.
  - (c) "Eligible employee" means an employee, as defined in Section 34A-2-104, who:
    - (i) works at least 30 hours per calendar week; and
    - (ii) meets the employer eligibility waiting period for qualified health insurance coverage provided by the employer.
  - (d) "Health benefit plan" means:
    - (i) the same as that term is defined in Section 31A-1-301; or
    - (ii) an employee welfare benefit plan:
      - (A) established under the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001 et seq.;
      - (B) for an employer with 100 or more employees; and
      - (C) in which the employer establishes a self-funded or partially self-funded group health plan to provide medical care for the employer's employees and dependents of the employees.
  - (e) "Qualified health insurance coverage" means the same as that term is defined in Section 26B-3-909.
  - (f) "Subcontractor" means the same as that term is defined in Section 63A-5b-605.
  - (g) "Third party administrator" or "administrator" means the same as that term is defined in Section 31A-1-301.
- (2) Except as provided in Subsection (3), the requirements of this section apply to:
- (a) a contractor of a design or construction contract with the division if the prime contract is in an aggregate amount of \$2,000,000 or more; and
  - (b) a subcontractor of a contractor of a design or construction contract with the division if the subcontract is in an aggregate amount of \$1,000,000 or more.
- (3) The requirements of this section do not apply to a contractor or subcontractor if:
- (a) the application of this section jeopardizes the division's receipt of federal funds;
  - (b) the contract is a sole source contract, as defined in Section 63G-6a-103; or
  - (c) the contract is the result of an emergency procurement.
- (4) A person who intentionally uses a change order, contract modification, or multiple contracts to circumvent the requirements of this section is guilty of an infraction.
- (5)
- (a) A contractor that is subject to the requirements of this section shall:

- (i) make and maintain an offer of qualified health coverage for the contractor's eligible employees and the eligible employees' dependents; and
  - (ii) submit to the director a written statement demonstrating that the contractor is in compliance with Subsection (5)(a)(i).
- (b) A statement under Subsection (5)(a)(ii):
- (i) shall be from:
    - (A) an actuary selected by the contractor or the contractor's insurer;
    - (B) an underwriter who is responsible for developing the employer group's premium rates; or
    - (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by a third party administrator; and
  - (ii) may not be created more than one year before the day on which the contractor submits the statement to the director.
- (c)
- (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii) shall provide the actuary or underwriter selected by an administrator, as described in Subsection (5)(b)(i)(C), sufficient information to determine whether the contractor's contribution to the health benefit plan and the actuarial value of the health benefit plan meet the requirements of qualified health coverage.
  - (ii) A contractor may not make a change to the contractor's contribution to the health benefit plan, unless the contractor provides notice to:
    - (A) the actuary or underwriter selected by an administrator, as described in Subsection (5)(b)(i)(C), for the actuary or underwriter to update the written statement described in Subsection (5)(a) in compliance with this section; and
    - (B) the division.
- (6)
- (a) A contractor that is subject to the requirements of this section shall:
- (i) ensure that each contract the contractor enters with a subcontractor that is subject to the requirements of this section requires the subcontractor to obtain and maintain an offer of qualified health coverage for the subcontractor's eligible employees and the eligible employees' dependents during the duration of the subcontract; and
  - (ii) obtain from a subcontractor referred to in Subsection (6)(a)(i) a written statement demonstrating that the subcontractor offers qualified health coverage to eligible employees and eligible employees' dependents.
- (b) A statement under Subsection (6)(a)(ii):
- (i) shall be from:
    - (A) an actuary selected by the subcontractor or the subcontractor's insurer;
    - (B) an underwriter who is responsible for developing the employer group's premium rates; or
    - (C) if the subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by an administrator; and
  - (ii) may not be created more than one year before the day on which the contractor obtains the statement from the subcontractor.
- (7)
- (a)
- (i) A contractor that fails to maintain an offer of qualified health coverage during the duration of the contract as required in this section is subject to penalties in accordance with administrative rules made by the division under this section, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

- (ii) A contractor is not subject to penalties for the failure of a subcontractor to obtain and maintain an offer of qualified health coverage as required in this section.
- (b)
  - (i) A subcontractor that fails to obtain and maintain an offer of qualified health coverage during the duration of the subcontract as required in this section is subject to penalties in accordance with administrative rules made by the division under this section, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (ii) A subcontractor is not subject to penalties for the failure of a contractor to maintain an offer of qualified health coverage as required in this section.
- (8) The division shall make rules:
  - (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
  - (b) in coordination with:
    - (i) the Department of Environmental Quality in accordance with Section 19-1-206;
    - (ii) the Department of Natural Resources in accordance with Section 79-2-404;
    - (iii) a public transit district in accordance with Section 17B-2a-818.5;
    - (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
    - (v) the Department of Transportation in accordance with Section 72-6-107.5; and
    - (vi) the Legislature's Administrative Rules Review and General Oversight Committee; and
  - (c) that establish:
    - (i) the requirements and procedures for a contractor and a subcontractor to demonstrate compliance with this section, including:
      - (A) a provision that a contractor or subcontractor's compliance with this section is subject to an audit by the division or the Office of the Legislative Auditor General;
      - (B) a provision that a contractor that is subject to the requirements of this section obtain a written statement as provided in Subsection (5); and
      - (C) a provision that a subcontractor that is subject to the requirements of this section obtain a written statement as provided in Subsection (6);
    - (ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:
      - (A) a three-month suspension of the contractor or subcontractor from entering into a future contract with the state upon the first violation;
      - (B) a six-month suspension of the contractor or subcontractor from entering into a future contract with the state upon the second violation;
      - (C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and
      - (D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health coverage for eligible employees and dependents of eligible employees of the contractor or subcontractor who were not offered qualified health coverage during the duration of the contract; and
    - (iii) a website for the department to post the commercially equivalent benchmark for the qualified health coverage that is provided by the Department of Health and Human Services in accordance with Subsection 26B-3-909(2).
- (9) During the duration of a contract, the division may perform an audit to verify a contractor or subcontractor's compliance with this section.
- (10)
  - (a) Upon the division's request, a contractor or subcontractor shall provide the division:
    - (i) a signed actuarial certification that the coverage the contractor or subcontractor offers is qualified health coverage; or



- (ii) all relevant documents and information necessary for the division to determine compliance with this section.
  - (b) If a contractor or subcontractor provides the documents and information described in Subsection (10)(a)(i), the Insurance Department shall assist the division in determining if the coverage the contractor or subcontractor offers is qualified health coverage.
- (11)
- (a)
    - (i) In addition to the penalties imposed under Subsection (7), a contractor or subcontractor that intentionally violates the provisions of this section is liable to an eligible employee for health care costs that would have been covered by qualified health coverage.
    - (ii) An employer has an affirmative defense to a cause of action under Subsection (11)(a)(i) if:
      - (A) the employer relied in good faith on a written statement described in Subsection (5) or (6);
      - or
      - (B) the department determines that compliance with this section is not required under the provisions of Subsection (3).
  - (b) An eligible employee has a private right of action against the employee's employer only as provided in this Subsection (11).
- (12) The director shall cause money collected from the imposition and collection of a penalty under this section to be deposited into the Medicaid Restricted Account created by Section 26B-1-309.
- (13) The failure of a contractor or subcontractor to provide qualified health coverage as required by this section:
- (a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under:
    - (i) Section 63G-6a-1602; or
    - (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and
  - (b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.
- (14) An employer's waiting period for an employee to become eligible for qualified health coverage may not extend beyond the first day of the calendar month following 60 days after the day on which the employee is hired.
- (15) An administrator, including an administrator's actuary or underwriter, who provides a written statement under Subsection (5)(a) or (c) regarding the qualified health coverage of a contractor or subcontractor who provides a health benefit plan described in Subsection (1)(d)(ii):
- (a) subject to Subsection (11)(b), is not liable for an error in the written statement, unless the administrator commits gross negligence in preparing the written statement;
  - (b) is not liable for any error in the written statement if the administrator relied in good faith on information from the contractor or subcontractor; and
  - (c) may require as a condition of providing the written statement that a contractor or subcontractor hold the administrator harmless for an action arising under this section.

Amended by Chapter 329, 2023 General Session

**63A-5b-608 Obligations beyond authorized funding prohibited -- Exceptions.**

- (1) Unless otherwise specifically instructed by the terms of the appropriation for a particular project, the director shall assure that no obligations beyond the authorized funding are incurred in the construction of any project authorized by the Legislature.

- (2) The director may expend appropriations for statewide projects from funds provided by the Legislature for the purposes and within the guidelines established by the Legislature.
- (3) The director may consent to the drafting of a plan or the awarding of a contract that will exceed in cost the funding currently available for the project only if the Legislature has specifically provided for extending construction of a building or the completion of a project into future fiscal periods.

Renumbered and Amended by Chapter 152, 2020 General Session

**63A-5b-609 Expenditure of appropriated funds supervised by director -- Contingencies -- Disposition of project reserve funds -- Set aside for Utah Percent-for-Art Program.**

- (1) The director shall:
  - (a)
    - (i) supervise the expenditure of funds in providing plans, engineering specifications, sites, and construction of the buildings for which legislative appropriations are made; and
    - (ii) specifically allocate money appropriated if more than one project is included in any single appropriation without legislative directive;
  - (b)
    - (i) expend the amount necessary from appropriations for planning, engineering, and architectural work; and
    - (ii)
      - (A) allocate amounts from appropriations necessary to cover expenditures previously made from the planning fund under Section 63A-5b-503 in the preparation of plans, engineering, and specifications; and
      - (B) return the amounts described in Subsection (1)(b)(ii)(A) to the planning fund; and
  - (c) hold in a statewide contingency reserve the amount budgeted for contingencies:
    - (i) in appropriations for the construction or remodeling of facilities; and
    - (ii) that are over and above all amounts obligated by contract for planning, engineering, architectural work, sites, and construction contracts.
- (2)
  - (a) The director shall base the amount budgeted for contingencies on a sliding scale percentage of the construction cost ranging from:
    - (i) 4-1/2% to 6-1/2% for new construction; and
    - (ii) 6% to 9-1/2% for remodeling projects.
  - (b) The director shall hold the statewide contingency funds to cover:
    - (i) costs of change orders; and
    - (ii) unforeseen, necessary costs beyond those specifically budgeted for the project.
  - (c)
    - (i) The Legislature shall annually review the percentage and the amount held in the statewide contingency reserve.
    - (ii) The Legislature may reappropriate to other building needs, including the cost of administering building projects, any amount from the statewide contingency reserve that is in excess of the reserve required to meet future contingency needs.
- (3)
  - (a) The director shall hold in a separate project reserve state appropriated funds accrued through bid savings and project residual.
  - (b) The director shall account for the funds accrued under Subsection (3)(a) in separate accounts as follows:

- (i) bid savings and project residual from a capital improvement project, as defined in Section 63A-5b-401; and
  - (ii) bid savings and project residual from a capital development project, as defined in Section 63A-5b-401.
- (c) The director may use project reserve funds in the account described in Subsection (3)(b)(i) for a capital improvement project:
- (i) approved under Section 63A-5b-405; and
  - (ii) for which funds are not allocated.
- (d) The director may:
- (i) authorize the use of project reserve funds in the accounts described in Subsection (3)(b) for the award of contracts in excess of a project's construction budget if the use is required to meet the intent of the project;
  - (ii) transfer money from the account described in Subsection (3)(b)(i) to the account described in Subsection (3)(b)(ii) if a capital development project has exceeded its construction budget; and
  - (iii) use project reserve funds for any emergency capital improvement project, whether or not the emergency capital improvement project is related to a project that has exceeded its construction budget.
- (e) The director shall report to the Office of the Legislative Fiscal Analyst within 30 days:
- (i) an expenditure under Subsection (3)(c); or
  - (ii) a transfer under Subsection (3)(d).
- (f) The Legislature shall annually review the amount held in the project reserve for possible reallocation by the Legislature to other building needs, including the cost of administering building projects.
- (4) If any part of the appropriation for a building project, other than the part set aside for the Utah Percent-for-Art Program under Title 9, Chapter 6, Part 4, Utah Percent-for-Art Act, remains unencumbered after the award of construction and professional service contracts and establishing a reserve for fixed and moveable equipment, the balance of the appropriation is dedicated to the project reserve and does not revert to the General Fund.
- (5)
- (a)
    - (i) One percent of the amount appropriated for the construction of any new state building or facility may be appropriated and set aside for the Utah Percent-for-Art Program administered by the Division of Fine Arts under Title 9, Chapter 6, Part 4, Utah Percent-for-Art Act.
    - (ii) The total amount appropriated under Subsection (5)(a)(i) may not exceed \$200,000.
  - (b) The director shall release to the Division of Fine Arts any funds included in an appropriation to the division that are designated by the Legislature for the Utah Percent-for-Art Program.
  - (c) Funds from appropriations for a state building or facility may not be set aside:
    - (i) if any part of the funds is derived from the issuance of bonds; and
    - (ii) to the extent the set aside of funds would jeopardize the federal income tax exemption otherwise allowed for interest paid on bonds.

Renumbered and Amended by Chapter 152, 2020 General Session  
Amended by Chapter 261, 2020 General Session

**63A-5b-610 Transfer from project reserve money.**

- (1) With the approval of and through an appropriation by the Legislature, the division shall transfer at least \$100,000 annually from the project reserve money to the General Fund to pay for personal service expenses associated with the management of construction projects.
- (2) With the approval of and as directed by the Legislature, the division shall transfer additional money from the project reserve money to pay administrative costs associated with the management of construction projects and other division responsibilities.

Renumbered and Amended by Chapter 152, 2020 General Session

## **Part 7 Operation and Maintenance**

### **63A-5b-701 Operation and maintenance for state facilities.**

- (1) As used in this section, "maintenance functions" means all programs and activities related to the operation and maintenance of a state facility, including preventive maintenance and inspection.
- (2)
  - (a) The director shall direct or delegate maintenance functions for an agency, except for:
    - (i) the State Capitol Preservation Board; and
    - (ii) an institution of higher education.
  - (b) The director may delegate responsibility for maintenance functions to an agency only if:
    - (i) the agency requests the responsibility; and
    - (ii) the director determines that:
      - (A) the agency has the necessary resources and skills to comply with maintenance functions standards approved by the director; and
      - (B) the delegation would result in net cost savings to the state as a whole.
  - (c) The State Capitol Preservation Board and an institution of higher education are exempt from division oversight of maintenance functions.
  - (d) An institution of higher education shall comply with the division's facility maintenance functions standards.
- (3)
  - (a) An institution of higher education shall annually report to the division, in a format required by the division, on the institution of higher education's compliance with the division's maintenance functions standards.
  - (b) The division shall:
    - (i) prescribe a standard format for reporting compliance with the division's maintenance functions standards;
    - (ii) report to the Legislature on the compliance or noncompliance with the standards; and
    - (iii) conduct periodic audits to ensure that institutions of higher education are complying with the standards and report the results of the audits to the Legislature.

Enacted by Chapter 152, 2020 General Session

### **63A-5b-702 Standards and requirements for state facilities -- Life-cycle cost effectiveness.**

- (1) As used in this section:

- (a) "Life cycle cost-effective" means the most prudent cost of owning, operating, and maintaining a facility, including the initial cost, energy costs, operation and maintenance costs, repair costs, and the costs of energy conservation and renewable energy systems.
- (b) "Renewable energy system" means a system designed to use solar, wind, geothermal power, wood, or other replenishable energy source to heat, cool, or provide electricity to a building.
- (2) The director shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules:
  - (a) that establish standards and requirements for determining whether a state facility project is life cycle cost-effective;
  - (b) for the monitoring of an agency's operation and maintenance expenditures for a state-owned facility;
  - (c) to establish standards and requirements for utility metering;
  - (d) that create an operation and maintenance program for an agency's facilities;
  - (e) that establish a methodology for determining reasonably anticipated inflationary costs for each operation and maintenance program described in Subsection (2)(d);
  - (f) that require an agency to report the amount the agency receives and expends on operation and maintenance; and
  - (g) that provide for determining the actual cost for operation and maintenance requests for a new facility.
- (3) The director shall:
  - (a) ensure that state-owned facilities, except for facilities under the control of the State Capitol Preservation Board, are life cycle cost-effective;
  - (b) conduct ongoing facilities audits of state-owned facilities; and
  - (c) monitor an agency's operation and maintenance expenditures for state-owned facilities as provided in rules made under Subsection (2)(b).
- (4)
  - (a) An agency shall comply with the rules made under Subsection (2) for new facility requests submitted to the Legislature for a session of the Legislature after the 2017 General Session.
  - (b) The Office of the Legislative Fiscal Analyst and the Governor's Office of Planning and Budget shall, for each agency with operation and maintenance expenses, ensure that each required budget for the agency is adjusted in accordance with the rules described in Subsection (2)(e).

Amended by Chapter 382, 2021 General Session

**63A-5b-703 Agency lease payments.**

- (1)
  - (a) Beginning July 1, 2020, the division shall implement a program to charge agencies, except institutions of higher education, lease payments for the agency's use and occupancy of space within a building.
  - (b) Before July 1, 2020, the division shall:
    - (i) conduct a market analysis of market lease rates for comparable space in buildings comparable to division-owned buildings; and
    - (ii) establish lease rates for an agency's use and occupancy of a division-owned building.
  - (c) The lease rates shall be:
    - (i) consistent with market rates for comparable space in comparable buildings;
    - (ii) calculated to cover:
      - (A) an amortized amount for capital replacement;
      - (B) an amount for capital improvements; and

- (C) operation and maintenance costs; and
- (iii) in proportion to legislative appropriations.
- (2) In making appropriations to cover lease payments under this section, the Legislature shall create a line item, as defined in Section 63J-1-102, for each agency to fund the lease payments.

Enacted by Chapter 152, 2020 General Session

## **Part 8**

### **Acquisitions of Real Property Interests**

#### **63A-5b-801 Definitions.**

As used in this part:

- (1) "Agency optional term" means an option that is exclusively exercisable by a leasing agency to extend the lease term.
- (2) "High-cost lease" means a real property lease that:
  - (a) has an initial term including any agency optional term of 10 years or more; or
  - (b) will require lease payments of more than \$5,000,000 over the term of the lease, including any agency optional term.
- (3)
  - (a) "Leasing agency" means a department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.
  - (b) "Leasing agency" does not include:
    - (i) the legislative branch;
    - (ii) the judicial branch; and
    - (iii) an institution of higher education.
- (4) "Significant lease terms" includes the duration of the lease, the frequency of the periodic payments, a renewal clause, a purchase option, a cancellation clause, a repair and maintenance clause, and a restriction on use of the property.

Enacted by Chapter 152, 2020 General Session

#### **63A-5b-802 Leasing responsibilities of the director.**

- (1) The director shall:
  - (a) prepare and submit a yearly request to the governor and Legislature for a designated amount of square footage by type of space to be leased by the division for that fiscal year;
  - (b) lease, in the name of the division, all real property space to be occupied by a leasing agency;
  - (c) in leasing space:
    - (i) use a process consistent with the best interest of the state, the requirements of the leasing agency, and the anticipated use of the property; and
    - (ii) comply with any legislative mandates contained in the appropriations act or other legislation;
  - (d) apply the criteria contained in Subsection (1)(f) to prepare a report evaluating each high-cost lease at least 12 months before the lease expires;
  - (e) evaluate each lease under the division's control and apply the criteria contained in Subsection (1)(f), as applicable, to evaluate the lease;

- (f) in evaluating leases:
    - (i) determine whether the lease is cost-effective when the needs of the leasing agency to be housed in the leased facilities are considered;
    - (ii) determine whether another option such as construction, use of other state-owned space, or a lease-purchase agreement is more cost-effective than leasing;
    - (iii) determine whether the significant lease terms are cost-effective and provide the state with sufficient flexibility and protection from liability;
    - (iv) compare the proposed lease payments to the current market rates, and evaluate whether the proposed lease payments are reasonable under current market conditions;
    - (v) compare proposed significant lease terms to the current market, and recommend whether these proposed terms are reasonable under current market conditions; and
    - (vi) if applicable, recommend that the lease or modification to a lease be approved or disapproved;
  - (g) based upon the evaluation, include in the report recommendations that identify viable alternatives to:
    - (i) make the lease cost-effective; or
    - (ii) meet the leasing agency's needs when the lease expires; and
  - (h) upon request, provide the information included in the report to:
    - (i) the leasing agency benefitted by the lease; and
    - (ii) the Office of the Legislative Fiscal Analyst.
- (2) The director may:
- (a) subject to legislative appropriation, enter into a facility lease with a term of up to 10 years if the length of the lease's term is economically advantageous to the state; and
  - (b) subject to legislative appropriation, enter into a facility lease with a term of more than 10 years if the length of the lease's term is economically advantageous to the state.

Amended by Chapter 421, 2022 General Session

**63A-5b-803 Reporting of leasing activity.**

- (1) The director shall:
  - (a) prepare a standard form upon which a leasing agency and another state institution or entity can report the current and proposed lease activity of the leasing agency, institution, or entity, including any lease renewal; and
  - (b) develop procedures and mechanisms within the division to:
    - (i) obtain and share information about each leasing agency's real property needs; and
    - (ii) provide oversight and review of lessors and lessees during the term of each lease.
- (2) Each leasing agency, the Administrative Office of the Courts, and the board of trustees for each institution of higher education, shall report all current and proposed lease activity on the standard form prepared by the division to:
  - (a) the division; and
  - (b) the Office of the Legislative Fiscal Analyst.

Amended by Chapter 421, 2022 General Session

**63A-5b-804 Leasing by the Administrative Office of the Courts -- Judicial Council approval required for high-cost lease -- Director's responsibilities.**

- (1) Before executing a high-cost lease or a modification to a lease that results in a high-cost lease, the Administrative Office of the Courts shall submit a draft of the new lease or modification to:

- (a) the Judicial Council; and
  - (b) the director.
- (2) The director shall:
- (a) review the draft submitted by the Administrative Office of the Courts; and
  - (b) within 30 days after receiving the draft, submit a report on the draft to:
    - (i) the Judicial Council; and
    - (ii) the Office of the Legislative Fiscal Analyst.
- (3) A report under Subsection (2)(b) shall contain:
- (a) the director's opinion about:
    - (i) whether the lease or modification is cost-effective when the needs of the entity to be housed in the leased facility are considered;
    - (ii) whether another option such as construction, use of other state-owned space, or a lease-purchase agreement is more cost-effective than leasing; and
    - (iii) whether the significant lease terms are cost-effective and provide the state with sufficient flexibility and protection from liability;
  - (b) a comparison of the proposed lease payments to the current market rates, and a recommendation as to whether the proposed lease payments are reasonable under current market conditions;
  - (c) a comparison of proposed significant lease terms to the current market, and a recommendation as to whether the proposed terms are reasonable under current market conditions; and
  - (d) a recommendation from the director that the lease or modification to a lease be approved or disapproved.
- (4)
- (a) The Administrative Office of the Courts may not execute a new high-cost lease or modification to an existing lease that will result in a high-cost lease unless the lease or modification is approved by a majority vote of the Judicial Council.
  - (b) The Judicial Council shall consider the recommendations of the director in determining whether to approve a high-cost lease or modification resulting in a high-cost lease.

Renumbered and Amended by Chapter 152, 2020 General Session

**63A-5b-805 Leasing by higher education institutions.**

- (1) The Utah Board of Higher Education shall establish written policies and procedures governing leasing by an institution of higher education.
- (2) Except as provided in Section 53B-2a-113, an institution of higher education shall comply with the procedures and requirements of the Utah Board of Higher Education policies before signing or renewing a lease.

Renumbered and Amended by Chapter 152, 2020 General Session

Amended by Chapter 360, 2020 General Session

Amended by Chapter 365, 2020 General Session

**63A-5b-806 Division rules on the value of property bought or exchanged -- Exception.**

- (1) The division shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to ensure that, if the division buys or exchanges real property, the value of the real property is congruent with the proposed price and other terms of the purchase or exchange.



- (2) The rules:
  - (a) shall establish procedures for determining the value of the real property;
  - (b) may provide that an appraisal, as defined in Section 61-2g-102, demonstrates the real property's value; and
  - (c) may require that the appraisal be completed by a state-certified general appraiser, as defined in Section 61-2g-102.
- (3) The rules adopted under Subsection (1) do not apply to the purchase or exchange of real property, or an interest in real property, with a value of less than \$500,000, as estimated by the division.

Amended by Chapter 421, 2022 General Session

## **Part 9**

### **Disposal of Division-owned Property**

#### **63A-5b-901 Definitions.**

As used in this part:

- (1) "Applicant" means a person who submits a timely, qualified proposal to the division.
- (2) "Condemnee" means the same as that term is defined in Section 78B-6-520.3.
- (3) "Division-owned property" means real property, including an interest in real property, to which the division holds title, regardless of who occupies or uses the real property.
- (4) "Local government entity" means a county, city, town, metro township, special district, special service district, community development and renewal agency, conservation district, school district, or other political subdivision of the state.
- (5) "Primary state agency" means a state agency for which the division holds title to real property that the state agency occupies or uses, as provided in Subsection 63A-5b-303(1)(a)(iv).
- (6) "Private party" means a person who is not a state agency, local government entity, or public purpose nonprofit entity.
- (7) "Public purpose nonprofit entity" means a corporation, association, organization, or entity that:
  - (a) is located within the state;
  - (b) is not a state agency or local government entity;
  - (c) is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code; and
  - (d) operates to fulfill a public purpose.
- (8) "Qualified proposal" means a written proposal that:
  - (a) meets the criteria established by the division by rule under Section 63A-5b-903;
  - (b) if submitted by a local government entity or public purpose nonprofit entity, explains the public purpose for which the local government entity or public purpose nonprofit entity seeks a transfer of ownership or lease of the vacant division-owned property; and
  - (c) the director determines will, if accepted and implemented, provide a material benefit to the state.
- (9) "Secondary state agency" means a state agency:
  - (a) that is authorized to hold title to real property that the state agency occupies or uses, as provided in Section 63A-5b-304; and
  - (b) for which the division does not hold title to real property that the state agency occupies or uses.

- (10) "State agency" means a department, division, office, entity, agency, or other unit of state government.
- (11) "Transfer of ownership" includes a transfer of the ownership of vacant division-owned property that occurs as part of an exchange of the vacant division-owned property for another property.
- (12) "Vacant division-owned property" means division-owned property that:
  - (a) a primary state agency is not occupying or using; and
  - (b) the director has determined should be made available for:
    - (i) use or occupancy by a primary state agency; or
    - (ii) a transfer of ownership or lease to a secondary state agency, local government entity, public purpose nonprofit entity, or private party.
- (13) "Written proposal" means a brief statement in writing that explains:
  - (a) the proposed use or occupancy, transfer of ownership, or lease of vacant division-owned property; and
  - (b) how the state will benefit from the proposed use or occupancy, transfer of ownership, or lease.

Amended by Chapter 16, 2023 General Session

**63A-5b-902 Application of part.**

- (1) The provisions of this part, other than this section, do not apply to:
  - (a) a conveyance, lease, or disposal under Subsection 63A-5b-303(1)(a)(viii);
  - (b) the division's disposal or lease of division-owned property with a value under \$500,000, as estimated by the division;
  - (c) a conveyance, lease, or disposal of division-owned property in connection with:
    - (i) the establishment of a state store, as defined in Section 32B-1-102; or
    - (ii) the construction of student housing; or
  - (d) a conveyance, lease, or disposal of any part of the point of the mountain state land, as defined in Section 11-59-102, by the Point of the Mountain State Land Authority created in Section 11-59-201.
- (2) Nothing in Subsection (1)(b) or (c) may be construed to diminish or eliminate the division's responsibility to manage division-owned property in the best interests of the state.

Amended by Chapter 263, 2023 General Session

**63A-5b-903 Rules made by the division.**

The division may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that:

- (1) establish criteria that a written proposal is required to satisfy in order to be a qualified proposal, including, if applicable, a minimum acceptable purchase price; and
- (2) define criteria that the director will consider in making a determination whether a proposed use or occupancy, transfer of ownership, or lease of vacant division-owned property provides a material benefit to the state.

Amended by Chapter 169, 2022 General Session

**63A-5b-904 Division authority with respect to vacant division-owned property -- Limitations.**

- (1) Subject to Section 63A-5b-909, the division may:

- (a) provide for a primary state agency's occupancy or use of vacant division-owned property, if the director determines that the primary state agency's occupancy or use is in the best interests of the state;
  - (b) effect a transfer of ownership or lease of vacant division-owned property, as provided in this section; or
  - (c) refer vacant division-owned property to the Department of Transportation for sale by auction, as provided in Section 63A-5b-908.
- (2)
- (a) The division may effect a transfer of ownership or lease of vacant division-owned property to an applicant for fair market value if the director determines that the transfer of ownership or lease to that applicant is in the state's best interest.
  - (b) In determining the state's best interest under Subsection (2)(a), the director may consider:
    - (i) the price and financial terms of all qualified proposals; and
    - (ii) the relative benefits to the state of the proposed uses of the vacant division-owned property as stated in the qualified proposals.
- (3) The division may effect a transfer of ownership or lease of vacant division-owned property without receiving fair market value in return if:
- (a) the director determines that the transfer of ownership or lease is in the best interests of the state;
  - (b) for a proposed transfer of ownership or lease to a local government entity, public purpose nonprofit entity, or private party, the director determines that the local government entity, public purpose nonprofit entity, or private party intends to use the property to fulfill a public purpose;
  - (c) the director requests and receives a recommendation on the proposed transfer of ownership or lease from the Legislative Executive Appropriations Committee;
  - (d) the director communicates the Executive Appropriations Committee's recommendation to the executive director; and
  - (e) the executive director approves the transfer of ownership or lease.
- (4)
- (a) If the division effects a transfer of ownership of vacant division-owned property without receiving fair market value in return, the division shall require the documents memorializing the transfer of ownership to preserve to the division:
    - (i) in the case of a transfer of ownership of vacant division-owned property to a secondary state agency, local government entity, or public purpose nonprofit entity for no or nominal consideration, a right of reversion, providing for the ownership of the property to revert to the division if the property ceases to be used for the public benefit; or
    - (ii) in the case of any other transfer of ownership of vacant division-owned property, a right of first refusal allowing the division to purchase the property from the transferee for the same price that the transferee paid to the division if the transferee wishes to transfer ownership of the former vacant division-owned property.
  - (b) Subsection (4)(a) does not apply to the sale of vacant division-owned property at an auction under Section 63A-5b-908.

Amended by Chapter 421, 2022 General Session

**63A-5b-905 Notice required before division may effect a transfer of ownership or lease of division-owned property.**

- (1) Before the division may effect a transfer of ownership or lease of vacant division-owned property, the division shall give notice as provided in Subsection (2).
- (2) A notice required under Subsection (1) shall:
  - (a) identify and describe the vacant division-owned property;
  - (b) indicate the availability of the vacant division-owned property;
  - (c) invite persons interested in the vacant division-owned property to submit a written proposal to the division;
  - (d) indicate the deadline for submitting a written proposal;
  - (e) be posted on the division's website for at least 60 consecutive days before the deadline for submitting a written proposal, in a location specifically designated for notices dealing with vacant division-owned property;
  - (f) be posted on the Utah Public Notice Website created in Section 63A-16-601 for at least 60 consecutive days before the deadline for submitting a written proposal; and
  - (g) be sent by email to each person who has previously submitted to the division a written request to receive notices under this section.

Amended by Chapter 421, 2022 General Session

**63A-5b-906 Submitting a written proposal for vacant division-owned property.**

- (1) A person may submit to the division a written proposal:
  - (a) in response to the division's notice under Section 63A-5b-905; or
  - (b) with respect to vacant division-owned property as to which the division has not given notice under Section 63A-5b-905.
- (2) The division is not required to consider a written proposal or provide notice under Section 63A-5b-905 if the director determines that the written proposal is not a qualified proposal.
- (3) If a person submits a qualified proposal to the division under Subsection (1)(b):
  - (a) the division shall:
    - (i) give notice as provided in Section 63A-5b-905; and
    - (ii) treat the qualified proposal as though it were submitted in response to the notice; and
  - (b) the person may, within the time provided for the submission of written proposals, modify the qualified proposal to the extent necessary to address matters raised in the notice that were not addressed in the initial qualified proposal.
- (4) A person who fails to submit a qualified proposal to the division within 60 days after the date of the notice under Section 63A-5b-905 may not be considered for the vacant division-owned property.

Renumbered and Amended by Chapter 152, 2020 General Session

**63A-5b-907 Priorities for vacant division-owned property -- Division to convey vacant division-owned property.**

- (1) This section applies to a proposed transfer of ownership or lease of vacant division-owned property at less than fair market value.
- (2)
  - (a) An applicant that is a state agency has priority for vacant division-owned property over an applicant that is a local government entity, a public purpose nonprofit entity, and a private party.
  - (b) An applicant that is a local government entity and an applicant that is a public purpose nonprofit entity have:

- (i) priority for vacant division-owned property over an applicant that is a private party; and
  - (ii) between them the same priority for vacant division-owned property.
- (3) If the division receives multiple timely qualified proposals from applicants with the highest and same priority, the division shall:
- (a) notify the executive director of:
    - (i) the availability of the vacant division-owned property; and
    - (ii) the applicants with the highest and same priority that have submitted qualified proposals; and
  - (b) provide the executive director with a copy of the timely qualified proposals submitted by the applicants with the highest and same priority.
- (4) Within 30 days after being notified under Subsection (3), the executive director shall:
- (a) determine which applicant's qualified proposal is most likely to result in the highest and best public benefit; and
  - (b) notify the division of the executive director's decision under Subsection (4)(a).
- (5) The division shall effect a transfer of ownership or lease of the vacant division-owned property to:
- (a) the applicant with the highest priority under Subsection (2), if the division receives a timely qualified proposal from a single applicant with the highest priority; or
  - (b) the applicant whose qualified proposal was determined by the executive director under Subsection (4) to be most likely to result in the highest and best public benefit, if the division receives multiple timely qualified proposals from applicants with the highest and same priority.

Amended by Chapter 421, 2022 General Session

**63A-5b-907.5 Lease of division-owned property to a private party.**

- (1) If the division leases division-owned property to a private party, the division shall, within 30 days after a lease agreement is executed, provide written notice of the lease to:
- (a) the municipality in which the division-owned property is located, if the division-owned property is within a municipality; or
  - (b) the county in whose unincorporated area the division-owned property is located, if the division-owned property is not located within a municipality.
- (2) Nothing in this part may be used by a private party leasing division-owned property as a basis for not complying with applicable local land use ordinances and regulations.

Enacted by Chapter 421, 2022 General Session

**63A-5b-908 Referring vacant division-owned property to the Department of Transportation for auction.**

- (1) The division may refer vacant division-owned property to the Department of Transportation for a public auction if:
- (a)
    - (i) the division has provided notice under Section 63A-5b-905 with respect to the vacant division-owned property; and
    - (ii) the division receives no qualified proposals in response to the notice under Section 63A-5b-905;
  - (b) the director determines that:
    - (i) there is no reasonable likelihood that within the foreseeable future:
      - (A) a primary state agency will use or occupy the vacant division-owned property; or

- (B) a secondary state agency, local government entity, or public purpose nonprofit entity will seek a transfer of ownership or lease of the vacant division-owned property; and
  - (ii) disposing of the vacant division-owned property through a public auction is in the best interests of the state;
  - (c) the director requests and receives a recommendation on the proposed public auction from the Legislative Executive Appropriations Committee;
  - (d) the director communicates the Executive Appropriations Committee's recommendation to the executive director; and
  - (e) the executive director approves the public auction.
- (2) If the division refers a vacant division-owned property to the Department of Transportation for public auction, the Department of Transportation shall publicly auction the vacant division-owned property under the same law and in the same manner that apply to a public auction of Department of Transportation property.
- (3) At a public auction conducted under Subsection (2), the Department of Transportation may, on behalf of the division, accept an offer to purchase the vacant division-owned property.
- (4) The division and the Department of Transportation shall coordinate together to:
- (a) manage the details of finalizing any sale of the vacant division-owned property at public auction; and
  - (b) ensure that the buyer acquires proper title and that the division receives the net proceeds of the sale.
- (5) If a public auction under this section does not result in a sale of the vacant division-owned property, the Department of Transportation shall notify the division and refer the vacant division-owned property back to the division.

Renumbered and Amended by Chapter 152, 2020 General Session

**63A-5b-909 State real property subject to right of first refusal.**

- (1)
- (a) If Section 78B-6-520.3 applies to vacant division-owned property, the division shall comply with Subsection 78B-6-520.3(3).
  - (b) If a condemnee accepts the division's offer to sell the vacant division-owned property as provided in Section 78B-6-520.3, the division shall:
    - (i) comply with the requirements of Section 78B-6-520.3; and
    - (ii) terminate any process under this chapter to convey the vacant division-owned property.
  - (c) A condemnee may waive rights and benefits afforded under Section 78B-6-520.3 and instead seek a transfer of ownership or lease of vacant division-owned property under the provisions of this chapter in the same manner as any other person not entitled to the rights and benefits of Section 78B-6-520.3.
- (2)
- (a) If Section 78B-6-521 applies to the anticipated disposal of the vacant division-owned property, the division shall comply with the limitations and requirements of Subsections 78B-6-521(2) and (3).
  - (b) If the original grantor or a subsequent bona fide purchaser, or the original grantor's or subsequent bona fide purchaser's assignee, accepts an offer for sale as provided in Subsection 78B-6-521(2)(a), the division shall:
    - (i) sell the vacant division-owned property to the original grantor or subsequent bona fide purchaser, or the original grantor's or subsequent bona fide purchaser's assignee, in accordance with Section 78B-6-521; and

- (ii) terminate any process under this chapter to convey the vacant division-owned property.
- (c) An original grantor or subsequent bona fide purchaser, or the original grantor's or subsequent bona fide purchaser's assignee, may waive rights afforded under Section 78B-6-521 and instead seek a transfer of ownership or lease of vacant division-owned property under the provisions of this chapter in the same manner as any other person seeking a transfer of ownership or lease of vacant division-owned property to which Section 78B-6-521 does not apply.

Amended by Chapter 101, 2022 General Session

**63A-5b-910 Disposition of proceeds received by division from sale of vacant division-owned property.**

- (1)
  - (a) Except as provided in Section 26B-1-331, the division shall pay into the state treasury the money received from the transfer of ownership or lease of vacant division-owned property.
  - (b) Money paid into the state treasury under Subsection (1)(a):
    - (i) becomes a part of the funds provided by law for carrying out the building program of the state; and
    - (ii) is appropriated for the purpose described in Subsection (1)(b)(i).
- (2) Except as described in Subsection 63A-5b-407(7), the proceeds from the transfer of ownership or lease of vacant division-owned property belonging to or used by a particular state agency shall, to the extent practicable, be expended for the construction of buildings or in the performance of other work for the benefit of that state agency.

Amended by Chapter 329, 2023 General Session

Amended by Chapter 369, 2023 General Session

**63A-5b-911 Authority to transfer land for commuter rail station and related development.**

The division may transfer title to a parcel of land it owns in a county of the first class to a public transit district for the purpose of facilitating the development of a commuter rail transit station and associated transit oriented development if:

- (1) the parcel is within one mile of the proposed commuter rail transit station and associated transit oriented development; and
- (2) the division receives in return fair and adequate consideration.

Renumbered and Amended by Chapter 152, 2020 General Session

**63A-5b-912 Report to Infrastructure and General Government Appropriations Subcommittee.**

The division shall, on or before the third Wednesday in November of every even-numbered year, present a written report to the Infrastructure and General Government Appropriations Subcommittee that identifies state land and buildings that are no longer needed and can be sold by the state.

Renumbered and Amended by Chapter 152, 2020 General Session

## Part 10

### Energy Conservation and Efficiency

#### **63A-5b-1001 Definitions.**

As used in this part:

- (1) "Energy efficiency measure" means an action taken or initiated by an agency that:
  - (a) reduces the agency's energy or fuel use or resource energy consumption, water or other resource consumption, operation and maintenance costs, or cost of energy, fuel, water, or other resource; or
  - (b) increases the agency's energy or fuel efficiency or resource consumption efficiency.
- (2) "Energy efficiency program" means a program established under Section 63A-5b-1002 for the purpose of improving energy efficiency measures and reducing the energy costs for state facilities.
- (3) "Fund" means the State Facility Energy Efficiency Fund created in Section 63A-5b-1003.
- (4) "Performance efficiency agreement" means an agreement entered into by an agency whereby the agency implements one or more energy efficiency measures and finances the costs associated with implementation of performance efficiency measures using the stream of expected savings in costs resulting from implementation of the performance efficiency measures as a funding source for repayment.
- (5)
  - (a) "State facility" means any building, structure, or other improvement that is constructed on property that the state, any of the state's departments, commissions, institutions, or agencies, or a state institution of higher education owns or leases as a tenant.
  - (b) "State facility" does not include:
    - (i) an unoccupied structure that is a component of the state highway system;
    - (ii) a privately owned structure that is located on property that the state, any of the state's departments, commissions, institutions, or agencies, or a state institution of higher education owns or leases as a tenant; or
    - (iii) a structure that is located on land administered by the trust lands administration under a lease, permit, or contract with the trust lands administration.

Amended by Chapter 421, 2022 General Session

#### **63A-5b-1002 State Building Energy Efficiency Program.**

- (1) The division shall:
  - (a) develop and administer the energy efficiency program, which shall include guidelines and procedures to improve energy efficiency in the maintenance and management of state facilities;
  - (b) provide information and assistance to agencies in the agencies' efforts to improve energy efficiency in state facilities;
  - (c) analyze energy consumption by agencies to identify opportunities for improved energy efficiency;
  - (d) establish an advisory group composed of representatives of agencies to provide information and assistance in the development and implementation of the energy efficiency program; and
  - (e) submit to the governor and to the Infrastructure and General Government Appropriations Subcommittee of the Legislature an annual report that:
    - (i) identifies strategies for long-term improvement in energy efficiency;



- (ii) identifies goals for energy conservation for the upcoming year; and
  - (iii) details energy management programs and strategies that were undertaken in the previous year to improve the energy efficiency of agencies and the energy savings achieved.
- (2) Each agency shall:
- (a) designate a staff member that is responsible for coordinating energy efficiency efforts within the agency with assistance from the division;
  - (b) provide energy consumption and costs information to the division;
  - (c) develop strategies for improving energy efficiency and reducing energy costs; and
  - (d) provide the division with information regarding the agency's energy efficiency and reduction strategies.
- (3)
- (a) An agency may enter into a performance efficiency agreement for a term of up to 20 years.
  - (b) Before entering into a performance efficiency agreement, the agency shall:
    - (i) utilize the division to oversee the project unless the project is exempt from the division's oversight or the oversight is delegated to the agency under the provisions of Section 63A-5b-701;
    - (ii) obtain the prior approval of the governor or the governor's designee; and
    - (iii) provide the Office of the Legislative Fiscal Analyst with a copy of the proposed agreement before the agency enters into the agreement.
- (4) An agency may consult with the energy efficiency program manager within the division regarding:
- (a) the cost effectiveness of energy efficiency measures; and
  - (b) ways to measure energy savings that take into account fluctuations in energy costs and temperature.
- (5)
- (a) Except as provided under Subsection (5)(c) and subject to future budget constraints, the Legislature may not remove energy savings from an agency's appropriation.
  - (b) An agency shall use energy savings to:
    - (i) fund the cost of the energy efficiency measures; and
    - (ii) if funds are available after meeting the requirements of Subsection (5)(b)(i), fund and implement new energy efficiency measures.
  - (c) The Legislature may remove energy savings if:
    - (i) an agency has complied with Subsection (5)(b)(i); and
    - (ii) no new cost-effective energy efficiency measure is available for implementation.

Amended by Chapter 116, 2021 General Session

**63A-5b-1004 State facility energy efficiency data.**

- (1) On or before July 1, 2022, each state facility shall submit to the division, or verify that the division already collects, the utility information for the state facility's utilities for each month, beginning with May 2021 and ending with May 2022.
- (2) A state facility shall submit the utility information described in Subsection (1):
  - (a) in a format approved by the division;
  - (b) for each location that the state facility uses; and
  - (c) for each of the following utilities that the state facility uses:
    - (i) water;
    - (ii) electric; and
    - (iii) natural gas.

- (3) The division shall use the information received in accordance with this section to identify opportunities for increased energy efficiency at each state facility.
- (4) Once the division has identified an energy efficiency project for a state facility, the staff of the state facility shall assist the division in completing the identified project.

Enacted by Chapter 116, 2021 General Session

## **Part 11 Miscellaneous Provisions**

### **63A-5b-1101 Gifts, grants, and donations.**

- (1)
  - (a) The state or the division may receive a gift, grant, or donation to further the purposes of this part.
  - (b) A gift, grant, or donation described in Subsection (1)(a) may not revert to the General Fund.
- (2)
  - (a) This Subsection (2) applies if:
    - (i) a donor donates land to an institution of higher education and commits to construct a building or buildings on the land; and
    - (ii) the institution of higher education:
      - (A) agrees to provide funds for the operation and maintenance costs of the building or buildings from sources other than state funds; and
      - (B) agrees that the building or buildings will not be eligible for state capital improvement funding.
  - (b) Notwithstanding any other provision of this chapter, an institution of higher education that receives a donation described in Subsection (2)(a) may:
    - (i) oversee and manage a construction project on the donated land without involvement, oversight, or management from the division; or
    - (ii) arrange for oversight and management of the construction project by the division.
  - (c) The role of compliance agency on a construction project on the donated land shall be provided by:
    - (i) the institution of higher education, for a construction project that the institution of higher education oversees and manages under Subsection (2)(b); or
    - (ii) the director, for a construction project that the division oversees and manages under Subsection (2)(b)(ii).

Enacted by Chapter 152, 2020 General Session

### **63A-5b-1102 Memorials by the state or state agencies.**

- (1) As used in this section:
  - (a) "Authorizing agency" means an agency that holds title to state land.
  - (b) "Authorizing agency" does not mean a special district under Title 17B, Limited Purpose Local Government Entities - Special Districts, or a special service district under Title 17D, Chapter 1, Special Service District Act.

- (2) The Legislature, the governor, or an authorizing agency may authorize the use or donation of state land for the purpose of maintaining, erecting, or contributing to the erection or maintenance of a memorial to commemorate individuals who have:
  - (a) participated in or have given their lives in any of the one or more wars or military conflicts in which the United States of America has been a participant; or
  - (b) given their lives in association with public service on behalf of the state, including firefighters, peace officers, highway patrol officers, or other public servants.
- (3) The use or donation of state land in relation to a memorial described in Subsection (2) may include:
  - (a) using or appropriating public funds for the purchase, development, improvement, or maintenance of state land on which a memorial is located or established;
  - (b) using or appropriating public funds for the erection, improvement, or maintenance of a memorial;
  - (c) donating or selling state land for use in relation to a memorial; or
  - (d) authorizing the use of state land for a memorial that is funded or maintained in part or in full by another public or private entity.
- (4) The Legislature, the governor, or an authorizing agency may specify the form, placement, and design of a memorial that is subject to this section if the Legislature, the governor, or the authorizing agency holds title to, has authority over, or donates the land on which a memorial is established.
- (5) A memorial within the definition of a capital development project, as defined in Section 63A-5b-401, is required to be approved as provided for in Section 63A-5b-402.
- (6) Nothing in this section may be construed as a prohibition of a memorial, including a memorial for a purpose not covered by this section, that:
  - (a) is erected within the approval requirements in effect at the time of the memorial's erection; or
  - (b) may be duly authorized through other legal means.

Amended by Chapter 16, 2023 General Session

**63A-5b-1103 Making keys to buildings of state, political subdivisions, or colleges and universities without permission prohibited.**

- (1) As used in this section:
  - (a) "Applicable government entity" means a state agency, a political subdivision of the state, the Utah Board of Higher Education, or any college or university supported in whole or in part by the state.
  - (b) "Government facility" means a building, laboratory, facility, room, dormitory, hall, or other structure owned, licensed as a licensee, leased as a tenant, or lawfully occupied by an applicable government entity.
- (2) An individual may not knowingly make or cause to be made any key or duplicate key for a government facility without the prior written consent of the applicable government entity.
- (3) A person who violates this section is guilty of a class B misdemeanor.

Enacted by Chapter 152, 2020 General Session

**63A-5b-1104 Notification to local governments for construction or modification of certain facilities.**

- (1)

- (a) The director or the director's designee shall notify in writing the elected representatives of a local government entity directly and substantively affected by any diagnostic, treatment, parole, probation, or other secured facility project exceeding \$500,000, if:
    - (i) the nature of the project has been significantly altered since an earlier notification;
    - (ii) the project would significantly change the nature of the functions presently conducted at the location; or
    - (iii) the project is new construction.
  - (b) At the request of the state entity or the local government entity, representatives from the state entity and the affected local entity shall conduct or participate in a local public hearing or hearings to discuss the issues described in Subsection (1)(a).
- (2)
- (a)
    - (i) Before beginning the construction of student housing on property owned by the state or an institution of higher education, the director shall provide written notice of the proposed construction, as provided in Subsection (2)(a)(ii), if any of the proposed student housing buildings is within 300 feet of privately owned residential property.
    - (ii) Each notice under Subsection (2)(a)(i) shall be provided to the legislative body and, if applicable, the mayor of:
      - (A) the county in whose unincorporated area the privately owned residential property is located; or
      - (B) the municipality in whose boundary the privately owned residential property is located.
  - (b)
    - (i) Within 21 days after receiving the notice required by Subsection (2)(a)(i), a county or municipality entitled to the notice may submit a written request to the director for a public hearing on the proposed student housing construction.
    - (ii) If a county or municipality requests a hearing under Subsection (2)(b)(i), the director and the county or municipality shall jointly hold a public hearing to provide information to the public and to allow the director and the county or municipality to receive input from the public about the proposed student housing construction.

Amended by Chapter 421, 2022 General Session

**63A-5b-1105 Testing and inspection firm requirements.**

The director shall ensure that any person performing testing and inspection work governed by the American Society for Testing Materials Standard E-329 on a public building under the director's supervision:

- (1) fully complies with the American Society for Testing Materials standard specifications for an agency engaged in the testing and inspection of materials known as ASTM E-329; and
- (2) carries a minimum of \$1,000,000 of errors and omissions insurance.

Enacted by Chapter 152, 2020 General Session

**63A-5b-1106 Critical land near state prison -- Definitions -- Preservation as open land -- Management and use of land -- Restrictions on transfer -- Wetlands development -- Conservation easement.**

- (1) For purposes of this section:
  - (a) "Corrections" means the Department of Corrections created under Section 64-13-2.
  - (b) "Critical land" means:

- (i) a parcel of approximately 250 acres of land owned by the division and located on the east edge of the Jordan River between about 12300 South and 14600 South in Salt Lake County, approximately the southern half of whose eastern boundary abuts the Denver and Rio Grande Western Railroad right-of-way; and
  - (ii) any parcel acquired in a transaction authorized under Subsection (3)(c) as a replacement for a portion of the parcel described in Subsection (1)(b)(i) that is conveyed as part of the transaction.
- (c)
- (i) "Open land" means land that is:
    - (A) preserved in or restored to a predominantly natural, open, and undeveloped condition; and
    - (B) used for:
      - (I) wildlife habitat;
      - (II) cultural or recreational use;
      - (III) watershed protection; or
      - (IV) another use consistent with the preservation of the land in or restoration of the land to a predominantly natural, open, and undeveloped condition.
  - (ii)
    - (A) "Open land" does not include land whose predominant use is as a developed facility for active recreational activities, including baseball, tennis, soccer, golf, or other sporting or similar activity.
    - (B) The condition of land does not change from a natural, open, and undeveloped condition because of the development or presence on the land of facilities, including trails, waterways, and grassy areas, that:
      - (I) enhance the natural, scenic, or aesthetic qualities of the land; or
      - (II) facilitate the public's access to or use of the land for the enjoyment of its natural, scenic, or aesthetic qualities and for compatible recreational activities.
- (2)
- (a)
    - (i) The critical land shall be preserved in perpetuity as open land.
    - (ii) The long-term ownership and management of the critical land should eventually be turned over to the Department of Natural Resources created under Section 79-2-201 or another agency or entity that is able to accomplish the purposes and intent of this section.
  - (b) Notwithstanding Subsection (2)(a)(i) and as funding is available, certain actions should be taken on or with respect to the critical land, including:
    - (i) the development and implementation of a program to eliminate noxious vegetation and restore and facilitate the return of natural vegetation on the critical land;
    - (ii) the development of a system of trails through the critical land that is compatible with the preservation of the critical land as open land;
    - (iii) the development and implementation of a program to restore the natural features of and improve the flows of the Jordan River as it crosses the critical land;
    - (iv) the preservation of the archeological site discovered on the critical land and the development of an interpretive site in connection with the archeological discovery;
    - (v) in restoring features on the critical land, the adoption of methods and plans that will enhance the critical land's function as a wildlife habitat;
    - (vi) taking measures to reduce safety risks on the critical land; and
    - (vii) the elimination or rehabilitation of a prison dump site on the critical land.
- (3)

- (a) Except as provided in Subsections (3)(b) and (c), no interest in the critical land may be sold, assigned, leased, or otherwise transferred unless measures are taken to ensure that the critical land that is transferred will be preserved as open land in perpetuity.
- (b) Notwithstanding Subsection (3)(a), exchanges of property may be undertaken to resolve boundary disputes with adjacent property owners and easements may be granted for trails and other purposes consistent with Subsection (2)(b) and with the preservation of the critical land as open land.
- (c) The Department of Natural Resources may transfer title to a portion of the critical land described in Subsection (1)(b)(i) in exchange for a parcel of land if:
  - (i) the parcel being acquired is:
    - (A) open land; and
    - (B) located within one mile of the portion of critical land being transferred; and
  - (ii) the purpose of the exchange is to facilitate the development of a commuter rail transit station and associated transit oriented development.
- (4) The division shall use the funds remaining from the appropriation under Laws of Utah 1998, Chapter 399, for the purposes of:
  - (a) determining the boundaries and legal description of the critical land;
  - (b) determining the boundaries and legal description of the adjacent property owned by the division;
  - (c) fencing the critical land and adjacent land owned by the division where appropriate and needed; and
  - (d) assisting to carry out the intent of this section.
- (5)
  - (a) Notwithstanding Subsection (2)(a)(i), the division or its successor in title to the critical land may develop or allow a public agency or private entity to develop more wetlands on the critical land than exist naturally or existed previously.
  - (b)
    - (i) Subject to Subsections (3)(a) and (5)(b)(ii), the division or its successor in title may transfer jurisdiction of all or a portion of the critical land to a public agency or private entity to provide for the development and management of wetlands and designated wetland buffer areas.
    - (ii) Before transferring jurisdiction of any part of the critical land under Subsection (5)(b)(i), the division or its successor in title shall assure that reasonable efforts are made to obtain approval from the appropriate federal agency to allow mitigation credits in connection with the critical land to be used for impacts occurring anywhere along the Wasatch Front.
- (6) Notwithstanding any other provision of this section, corrections shall have access to the cooling pond located on the critical land as long as that access to and use of the cooling pond are not inconsistent with the preservation of the critical land as open land.
- (7) Corrections, the division, and all other state departments, divisions, or agencies shall cooperate together to carry out the intent of this section.
- (8) In order to ensure that the land referred to in this section is preserved as open land, the division shall, as soon as practicable, place the land under a perpetual conservation easement in favor of an independent party such as a reputable land conservation organization or a state or local government agency with experience in conservation easements.

Renumbered and Amended by Chapter 152, 2020 General Session

**63A-5b-1107 Development of new correctional facilities.**

- (1) As used in this section:

- (a) "Committee" means the Legislative Management Committee created in Section 36-12-6.
  - (b) "New correctional facilities" means a new prison and related facilities to be constructed to replace the state prison located in Draper.
  - (c) "Prison project" means all aspects of a project for the design and construction of new correctional facilities on the selected site, including:
    - (i) the acquisition of land, interests in land, easements, or rights-of-way;
    - (ii) site improvement; and
    - (iii) the acquisition, construction, equipping, or furnishing of facilities, structures, infrastructure, roads, parking facilities, utilities, and improvements, whether on or off the selected site, that are necessary, incidental, or convenient to the development of new correctional facilities on the selected site.
  - (d) "Selected site" means the site selected as the site for new correctional facilities.
- (2) In consultation with the committee, the division shall oversee the prison project, as provided in this section.
- (3)
- (a) In accordance with Title 63G, Chapter 6a, Utah Procurement Code, and this section, the division shall:
    - (i) enter into contracts with persons providing professional and construction services for the prison project;
    - (ii) provide reports to the committee regarding the prison project, as requested by the committee; and
    - (iii) consider input from the committee on the prison project, subject to Subsection (3)(b).
  - (b) The division may not consult with or receive input from the committee regarding:
    - (i) the evaluation of proposals from persons seeking to provide professional and construction services for the prison project; or
    - (ii) the selection of persons to provide professional and construction services for the prison project.
  - (c) A contract with a project manager or person with a comparable position on the prison project shall include a provision that requires the project manager or other person to provide reports to the committee regarding the prison project, as requested by the committee.
- (4) All contracts associated with the design or construction of new correctional facilities shall be awarded and managed by the division in accordance with Title 63G, Chapter 6a, Utah Procurement Code, and this section.
- (5) The division shall coordinate with the Department of Corrections, created in Section 64-13-2, and the State Commission on Criminal and Juvenile Justice, created in Section 63M-7-201, during the prison project to help ensure that the design and construction of new correctional facilities are conducive to and consistent with, and help to implement any reforms of or changes to, the state's corrections system and corrections programs.
- (6)
- (a) There is created a capital projects fund known as the "Prison Project Fund."
  - (b) The fund consists of:
    - (i) money appropriated to the fund by the Legislature; and
    - (ii) proceeds from the issuance of bonds authorized in Section 63B-25-101 to provide funding for the prison project.
  - (c)
    - (i) The fund shall earn interest or other earnings.
    - (ii) The Division of Finance shall deposit interest or other earnings derived from the investment of fund money into the fund.

(d) Money in the fund shall be used by the division to fund the prison project.

Amended by Chapter 534, 2023 General Session

**63A-5b-1108 Water conservation and state government facilities.**

(1) As used in this section:

(a) "Division" means the Division of Water Resources.

(b) "Grounds" means the real property, whether fenced or unfenced, of the parcel of land on which is located a state government facility, including a public or private driveway, street, sidewalk or walkway, parking lot, or parking garage on the property.

(c)

(i) Except as provided in Subsection (1)(c)(ii), "lawn or turf" means nonagricultural land planted in closely mowed, managed grasses.

(ii) "Lawn or turf" does not include a golf course, park, athletic field, or sod farm.

(d) "Reconstructed" means that a building is subject to construction that affects the exterior of the building or the building's grounds.

(e)

(i) "State agency" means a department, division, office, entity, agency, or other unit of state government.

(ii) "State agency" includes an institution of higher education.

(f)

(i) "State government facility" means a building, structure, or other improvement that is constructed on property owned by the state, the state's departments, commissions, institutions, or other state agency.

(ii) "State government facility" does not include:

(A) an unoccupied structure that is a component of the state highway system;

(B) a privately owned structure that is located on property owned by the state, the state's department, commission, institution, or other state agency; or

(C) a structure that is located on land administered by the trust lands administration under a lease, permit, or contract with the trust lands administration.

(2)

(a) Unless exempted under Subsection (2)(b), a state agency that owns or occupies a state government facility that is built or reconstructed on or after May 4, 2022, may not have more than 20% of the grounds of the state government facility be lawn or turf.

(b) The division may exempt a state government facility from the restrictions of Subsection (2) (a) if the division determines that the purposes of a state agency that occupies the state government facility requires additional lawn or turf.

(3)

(a) A state agency shall reduce the state agency's outdoor water use as compared to the state agency's outdoor water use for fiscal year 2020:

(i) in an amount equal to or greater than 5% by the end of fiscal year 2023; and

(ii) in an amount equal to or greater than 25% by the end of fiscal year 2026.

(b) A state agency shall submit the following information to the division:

(i) by no later than October 1, 2022:

(A) the state agency's water use for fiscal year 2020; and

(B) the state agency's water use for fiscal year 2022;

(ii) by no later than October 1, 2023, the state agency's water use for fiscal year 2023; and

(iii) by no later than October 1, 2026, the state agency's water use for fiscal year 2026.



- (c) The division shall:
  - (i) post the information provided to the division under this Subsection (3) on a public website; and
  - (ii) by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish a uniform measure for purposes of this section of a state agency's water use.
- (4) Except when allowed by the division, a state agency may not water landscapes at a state government facility between the hours of 10 a.m. and 6 p.m.
- (5) A state agency shall do the following at a state government facility:
  - (a) follow weekly lawn watering guides if issued by the division;
  - (b) manually shut off systems during rain and wind events if the landscape irrigation system does not have rain and wind shutoff functions;
  - (c) implement a leak-detection and repair program for outdoor use;
  - (d) coordinate with the division to implement water efficient methods, technologies, and practices; and
  - (e) at least annually:
    - (i) evaluate opportunities to update irrigation technology with devices that:
      - (A) meet national recognized standards for efficiency;
      - (B) include rain and wind shutoff functions; and
      - (C) include soil moisture sensors;
    - (ii) evaluate opportunities to:
      - (A) subject to Subsection (2), limit lawn or turf on the grounds of a state government facility and replace lawn or turf with water-wise plants; and
      - (B) update facility-management technology to include metering for water-consuming processes related to irrigation and mechanical systems; and
    - (iii) audit and repair a landscape irrigation system so that the landscape irrigation system is operating at maximum acceptable efficiency.

Enacted by Chapter 50, 2022 General Session

**63A-5b-1109 Buildings and facilities to which chapter applies -- Standards available to interested parties -- Division of Facilities Construction and Management staff to advise, review, and approve plans when possible.**

- (1)
  - (a) The standards in this section apply to all buildings and facilities used by the public that are constructed or remodeled in whole or in part by the use of state funds, or the funds of any political subdivision of the state.
  - (b) All of those buildings and facilities constructed in Utah after May 12, 1981, shall conform to the standard prescribed in this section except buildings, facilities, or portions of them, not intended for public use, including:
    - (i) caretaker dwellings;
    - (ii) service buildings; and
    - (iii) heating plants.
- (2) This section applies to temporary or emergency construction as well as permanent buildings.
- (3)
  - (a) The standards established in this section apply to the remodeling or alteration of any existing building or facility within the jurisdictions set forth in this section where the remodeling or alteration will affect an area of the building or facility in which there are architectural barriers for persons with a physical disability.

- (b) If the remodeling involves less than 50% of the space of the building or facility, only the areas being remodeled need comply with the standards.
  - (c) If remodeling involves 50% or more of the space of the building or facility, the entire building or facility shall be brought into compliance with the standards.
- (4)
- (a) All individuals and organizations are encouraged to apply the standards prescribed in this section to all buildings used by the public, but that are financed from other than public funds.
  - (b) The Division of Facilities Construction and Management shall:
    - (i) make the standards established by this section available to interested individuals and organizations; and
    - (ii) upon request and to the extent possible, make available the services of the Division of Facilities Construction and Management staff to advise, review, and approve plans and specifications in order to comply with the standards of this section.
- (5)
- (a) This section is concerned with nonambulatory disabilities, semiambulatory disabilities, sight disabilities, hearing disabilities, disabilities of incoordination, and aging.
  - (b) This section is intended to make all buildings and facilities covered by this section accessible to, and functional for, persons with a physical disability.
- (6) The standards of this section are the current edition of planning and design criteria to prevent architectural barriers for the aged and persons with a physical disability, as promulgated by the Division of Facilities Construction and Management.
- (7) The responsibility for adoption of the planning and design criteria referred to in this section, and enforcement of this section shall be as follows:
- (a) where state school funds are utilized, the State Board of Education;
  - (b) where state funds are utilized, the Division of Facilities Construction and Management; and
  - (c) where funds of political subdivisions are utilized, the governing board of the county or municipality in which the building or facility is located.

Renumbered and Amended by Chapter 329, 2023 General Session

## **Chapter 9**

### **Division of Fleet Operations and Administration of State Motor Vehicles**

#### **Part 1**

#### **General Provisions**

#### **63A-9-101 Definitions.**

As used in this part:

- (1)
- (a) "Agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.
  - (b) "Agency" includes the State Board of Education and each higher education institution described in Section 53B-1-102.
  - (c) "Agency" includes the legislative and judicial branches.

- (2) "Committee" means the Motor Vehicle Review Committee created by this chapter.
- (3) "Director" means the director of the division.
- (4) "Division" means the Division of Fleet Operations created by this chapter.
- (5) "Executive director" means the executive director of the Department of Government Operations.
- (6) "Local agency" means:
  - (a) a county;
  - (b) a municipality;
  - (c) a school district;
  - (d) a special district;
  - (e) a special service district;
  - (f) an interlocal entity as defined under Section 11-13-103; or
  - (g) any other political subdivision of the state, including a local commission, board, or other governmental entity that is vested with the authority to make decisions regarding the public's business.
- (7)
  - (a) "Motor vehicle" means a self-propelled vehicle capable of carrying passengers.
  - (b) "Motor vehicle" includes vehicles used for construction and other nontransportation purposes.
- (8) "State vehicle" means each motor vehicle owned, operated, or in the possession of an agency.

Amended by Chapter 16, 2023 General Session

## **Part 2**

### **Division of Fleet Operations**

#### **63A-9-201 Creation.**

- (1) There is created the Division of Fleet Operations within the department.
- (2) The division of fleet operations is an internal service fund agency and its financial affairs shall be accounted for as an internal service fund.

Amended by Chapter 344, 2021 General Session

#### **63A-9-202 Director of division -- Appointment.**

The executive director of the department shall appoint the director of the Division of Fleet Operations with the approval of the governor.

Enacted by Chapter 334, 1996 General Session

#### **63A-9-203 Director -- Duties.**

The director shall establish and administer the division.

Enacted by Chapter 334, 1996 General Session

## **Part 4**

### **Division Duties**

**63A-9-401 Division -- Duties.**

- (1) The division shall:
  - (a) perform all administrative duties and functions related to management of state vehicles;
  - (b) coordinate all purchases of state vehicles;
  - (c) establish one or more fleet automation and information systems for state vehicles;
  - (d) make rules establishing requirements for:
    - (i) maintenance operations for state vehicles;
    - (ii) use requirements for state vehicles;
    - (iii) fleet safety and loss prevention programs;
    - (iv) preventative maintenance programs;
    - (v) procurement of state vehicles, including:
      - (A) vehicle standards;
      - (B) alternative fuel vehicle requirements;
      - (C) short-term lease programs;
      - (D) equipment installation; and
      - (E) warranty recovery programs;
    - (vi) fuel management programs;
    - (vii) cost management programs;
    - (viii) business and personal use practices, including commute standards;
    - (ix) cost recovery and billing procedures;
    - (x) disposal of state vehicles;
    - (xi) reassignment of state vehicles and reallocation of vehicles throughout the fleet;
    - (xii) standard use and rate structures for state vehicles; and
    - (xiii) insurance and risk management requirements;
  - (e) establish a parts inventory;
  - (f) create and administer a fuel dispensing services program that meets the requirements of Subsection (2);
  - (g) emphasize customer service when dealing with agencies and agency employees;
  - (h) conduct an annual audit of all state vehicles for compliance with division requirements;
  - (i) before charging a rate, fee, or other amount to an executive branch agency, or to a subscriber of services other than an executive branch agency:
    - (i) submit the proposed rates, fees, and cost analysis to the Rate Committee established in Section 63A-1-114; and
    - (ii) obtain the approval of the Legislature as required by Section 63J-1-410 or 63J-1-504; and
  - (j) conduct an annual market analysis of proposed rates and fees, which analysis shall include a comparison of the division's rates and fees with the fees of other public or private sector providers where comparable services and rates are reasonably available.
- (2) The division shall operate a fuel dispensing services program in a manner that:
  - (a) reduces the risk of environmental damage and subsequent liability for leaks involving state-owned underground storage tanks;
  - (b) eliminates fuel site duplication and reduces overall costs associated with fuel dispensing;
  - (c) provides efficient fuel management and efficient and accurate accounting of fuel-related expenses;
  - (d) where practicable, privatizes portions of the state's fuel dispensing system;
  - (e) provides central planning for fuel contingencies;
  - (f) establishes fuel dispensing sites that meet geographical distribution needs and that reflect usage patterns;

- (g) where practicable, uses alternative sources of energy; and
  - (h) provides safe, accessible fuel supplies in an emergency.
- (3) The division shall:
- (a) ensure that the state and each of its agencies comply with state and federal law and state and federal rules and regulations governing underground storage tanks;
  - (b) coordinate the installation of new state-owned underground storage tanks and the upgrading or retrofitting of existing underground storage tanks;
  - (c) by no later than June 30, 2025, ensure that an underground storage tank qualifies for a rebate, provided under Subsection 19-6-410.5(5)(d), of a portion of the environmental assurance fee described in Subsection 19-6-410.5(4), if the underground storage tank is owned by:
    - (i) the state;
    - (ii) a state agency; or
    - (iii) a county, municipality, school district, special district, special service district, or federal agency that has subscribed to the fuel dispensing service provided by the division under Subsection (6)(b);
  - (d) report to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee by no later than:
    - (i) November 30, 2020, on the status of the requirements of Subsection (3)(c); and
    - (ii) November 30, 2024, on whether:
      - (A) the requirements of Subsection (3)(c) have been met; and
      - (B) additional funding is needed to accomplish the requirements of Subsection (3)(c); and
  - (e) ensure that counties, municipalities, school districts, special districts, and special service districts subscribing to services provided by the division sign a contract that:
    - (i) establishes the duties and responsibilities of the parties;
    - (ii) establishes the cost for the services; and
    - (iii) defines the liability of the parties.
- (4) In fulfilling the requirements of Subsection (3)(c), the division may give priority to underground storage tanks owned by the state or a state agency under Subsections (3)(c)(i) and (ii).
- (5)
- (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director of the Division of Fleet Operations:
    - (i) may make rules governing fuel dispensing; and
    - (ii) shall make rules establishing standards and procedures for purchasing the most economically appropriate size and type of vehicle for the purposes and driving conditions for which the vehicle will be used, including procedures for granting exceptions to the standards by the executive director of the Department of Government Operations.
  - (b) Rules made under Subsection (5)(a)(ii):
    - (i) shall designate a standard vehicle size and type that shall be designated as the statewide standard vehicle for fleet expansion and vehicle replacement;
    - (ii) may designate different standard vehicle size and types based on defined categories of vehicle use;
    - (iii) may, when determining a standard vehicle size and type for a specific category of vehicle use, consider the following factors affecting the vehicle class:
      - (A) size requirements;
      - (B) economic savings;
      - (C) fuel efficiency;
      - (D) driving and use requirements;

- (E) safety;
  - (F) maintenance requirements;
  - (G) resale value; and
  - (H) the requirements of Section 63A-9-403; and
- (iv) shall require agencies that request a vehicle size and type that is different from the standard vehicle size and type to:
- (A) submit a written request for a nonstandard vehicle to the division that contains the following:
    - (I) the make and model of the vehicle requested, including acceptable alternate vehicle makes and models as applicable;
    - (II) the reasons justifying the need for a nonstandard vehicle size or type;
    - (III) the date of the request; and
    - (IV) the name and signature of the person making the request; and
  - (B) obtain the division's written approval for the nonstandard vehicle.
- (6)
- (a)
    - (i) Each state agency and each higher education institution shall subscribe to the fuel dispensing services provided by the division.
    - (ii) A state agency may not provide or subscribe to any other fuel dispensing services, systems, or products other than those provided by the division.
  - (b) Counties, municipalities, school districts, special districts, special service districts, and federal agencies may subscribe to the fuel dispensing services provided by the division if:
    - (i) the county or municipal legislative body, the school district, or the special district or special service district board recommends that the county, municipality, school district, special district, or special service district subscribe to the fuel dispensing services of the division; and
    - (ii) the division approves participation in the program by that government unit.
- (7) The director, with the approval of the executive director, may delegate functions to institutions of higher education, by contract or other means authorized by law, if:
- (a) the agency or institution of higher education has requested the authority;
  - (b) in the judgment of the director, the state agency or institution has the necessary resources and skills to perform the delegated responsibilities; and
  - (c) the delegation of authority is in the best interest of the state and the function delegated is accomplished according to provisions contained in law or rule.

Amended by Chapter 16, 2023 General Session

**63A-9-401.5 Vehicle fleet cost efficiency plans -- Requirements -- Contents -- Submission by agencies.**

- (1) The division shall develop and coordinate the implementation of a statewide vehicle fleet cost efficiency plan to ensure continuing progress toward statewide overall cost reduction in government vehicle costs. The plan shall include:
  - (a) goals for vehicle fleet cost efficiency;
  - (b) a summary of agency submitted plans, statistics, and progress;
  - (c) standard measures of cost including:
    - (i) vehicle cost per mile;
    - (ii) total vehicles;
    - (iii) total fuel used; and

- (iv) miles per gallon of fuel;
  - (d) goals for purchasing the most economically appropriate size and type of vehicle for the purposes and driving conditions for which the vehicle will be used;
  - (e) cost reduction measures which may include:
    - (i) reducing vehicle engine idle time;
    - (ii) driving fewer miles;
    - (iii) using car pools when possible;
    - (iv) avoiding rush hour traffic;
    - (v) reducing aggressive driving;
    - (vi) providing proper preventative maintenance including properly inflated tires; and
    - (vii) purchasing from state fuel sites and using the lowest octane fuel needed for the altitude;
  - (f) reducing inventories of underutilized vehicles; and
  - (g) education to inform drivers of their accountability on implementing cost reduction measures.
- (2) The division shall assist agencies to develop and implement their own plans in accordance with this part.
- (3) Each agency that owns or leases vehicles shall develop, implement, and submit to the division under Section 63A-9-402, a vehicle fleet cost efficiency plan for their agency in accordance with the provisions under Subsection (1). The plan shall include agency goals and statistics, and a report of agency progress.

Enacted by Chapter 106, 2007 General Session

**63A-9-402 State-owned vehicle report -- Contents.**

- (1) On or before October 1 of each year, each agency that owns or leases vehicles shall submit a report to the division that contains at least the following information:
- (a) a description of each vehicle owned or leased by that agency, including the license number, year, make, and model of the vehicle;
  - (b) the person and administrative unit within the agency to whom each vehicle is assigned; and
  - (c) a vehicle fleet cost efficiency plan in accordance with the provisions of Section 63A-9-401.5.
- (2)
- (a) On or before November 1 of each calendar year, the director of the division shall submit a state-owned vehicle report to the governor and to the legislative fiscal analyst.
  - (b) The report shall contain a summary of vehicles owned or leased by each state agency including:
    - (i) a description of each vehicle owned or leased by each agency;
    - (ii) the person or administrative unit within the agency to whom each vehicle is assigned; and
    - (iii) standard measures of cost for the previous year, for each vehicle, including:
      - (A) vehicle cost per mile;
      - (B) total vehicles;
      - (C) total fuel used; and
      - (D) miles per gallon of fuel.
- (3) The legislative fiscal analyst shall submit the information from the state-owned vehicle report about each agency's state-owned vehicles to the legislative appropriation subcommittee that has jurisdiction over that agency.
- (4)
- (a) Vehicles used in official investigative work where secrecy is essential are exempt from the requirements of this section.

- (b) The report to the governor and legislative fiscal analyst shall include the total number of state vehicles used in official investigative work where secrecy is essential that are not otherwise accounted for in the report.

Amended by Chapter 106, 2007 General Session

**63A-9-403 Clean emissions vehicles -- Alternative fuel vehicles.**

No later than August 30, 2018, the division shall ensure that 50% or more of new or replacement division-owned state vehicles that are motor vehicles used for the transportation of passengers are motor vehicles with emissions that are equal to or cleaner than the standards established in bin 2 in Table S04-1, of 40 C.F.R. 86.1811-04(c)(6), or any vehicle propelled to a significant extent using one of the following alternative fuels:

- (1) electricity from an off-board source;
- (2) natural gas;
- (3) liquid petroleum gas;
- (4) hydrogen; or
- (5) biodiesel.

Enacted by Chapter 190, 2014 General Session

**Part 5  
Misuse of Vehicles**

**63A-9-501 Complaints about misuse or illegal operation of state vehicles -- Disposition.**

- (1) The division shall refer complaints from the public about misuse or illegal operation of state vehicles to the agency that is the owner or lessor of the vehicle.
- (2) Each agency head or the agency head's designee shall investigate all complaints about misuse or illegal operation of state vehicles and shall discipline each employee that is found to have misused or illegally operated a vehicle by following the procedures described in the rules made by the Division of Human Resource Management, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as authorized by Section 63A-17-306.
- (3)
  - (a) Each agency shall report the findings of each investigation conducted as well as any action taken as a result of the investigation to the directors of the Divisions of Fleet Operations and Risk Management.
  - (b) Misuse or illegal operation of state vehicles may result in suspension or revocation of state vehicle driving privileges as governed in rule.

Amended by Chapter 169, 2022 General Session

**Part 6  
Marking of Vehicles**

**63A-9-601 Marking of vehicles.**

- (1)



- (a) Except as provided in Subsection (5), all motor vehicles owned, leased for use, or operated by the state shall display an identification mark and "EX" plates where required by Section 41-1a-407.
- (b) The division is responsible for ensuring that vehicles owned or leased by the state are marked.
- (c) The division shall enact rules relating to the size and design of the identification mark.
- (2) The identification mark shall be clear, distinct, and kept free from defacement, mutilation, grease, and other obscuring matter so that it is plainly visible at all times.
- (3) Each person operating a state vehicle without the proper designation is guilty of an infraction.
- (4) Vehicles used in official investigative work where secrecy is essential are exempt from the requirements of this section.
- (5) Notwithstanding Subsection (1), the division may grant security exemptions to the identification mark and "EX" plate requirement when the division:
  - (a) receives a request for an exemption; and
  - (b) determines there is a substantial danger to the person to whom the vehicle is assigned if the vehicle is identified as a state vehicle.

Enacted by Chapter 334, 1996 General Session

## **Part 7**

### **Use of Division Services**

#### **63A-9-701 Subscription to motor pool by certain local government entities.**

- (1) The following local government entities may subscribe to the central motor pool service provided by the division subject to the conditions established in Subsection (2):
  - (a) local health departments as defined in Title 26A, Chapter 1, Part 1, Local Health Department Act;
  - (b) local substance abuse authorities as defined in Section 17-43-201;
  - (c) local area agencies, as authorized by Section 26B-6-104, or their subcontractors who are local governmental or public entities; and
  - (d) local mental health authorities as defined in Section 17-43-301.
- (2) The local government entities outlined in Subsection (1) may subscribe to the central motor pool service provided by the division only if:
  - (a) the director of the local government entity determines it will result in substantial cost savings or increased efficiency to the local government entity; and
  - (b) the central motor pool has sufficient vehicles available.

Amended by Chapter 329, 2023 General Session

#### **63A-9-702 Authority of public to purchase natural gas from the state fuel network -- Rulemaking authority.**

- (1) As used in this section, "private individual or entity" means any individual or entity that:
  - (a) is not acting under the authority of a federal, state, or local government agency; and
  - (b) is not purchasing compressed natural gas from the state's fuel network for sale, resale, distribution, redistribution, trade, exchange, or in furtherance of a commercial enterprise.

- (2) The division may allow a private individual or entity to purchase compressed natural gas from the state's fuel network if:
  - (a) there is no commercial fuel site that meets the geographical compressed natural gas distribution needs of private individuals or entities; and
  - (b) there is no emergency that, as determined by the division, warrants the holding of compressed natural gas in reserve for use by state or emergency vehicles.
- (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules:
  - (a) giving state and local agencies priority to dispense and receive compressed natural gas from the state's fuel network sites;
  - (b) designating state fuel network sites that may be made available to private individuals and entities for the purchase of compressed natural gas;
  - (c) defining the terms of operation for each site designated under Subsection (3)(b);
  - (d) unless otherwise prohibited by law, limiting the amount of compressed natural gas that may be purchased from the state's fuel network by any private individual or entity at any one time, or in the aggregate during any given period of time;
  - (e) providing conditions upon which a private individual or entity's authorization to purchase compressed natural gas from the state fuel network may be granted, revoked, or suspended under this section;
  - (f) to establish or determine compliance with Subsections (2)(a) and (b); and
  - (g) defining the term "geographical compressed natural gas needs of a private individual or entity."

Enacted by Chapter 65, 2008 General Session

**Chapter 12**  
**Division of Archives and Records Service and Management of Government Records**  
**Part 1**  
**General Provisions**

**63A-12-100.5 Definitions.**

- (1) Except as provided under Subsection (2), the definitions in Section 63G-2-103 apply to this chapter.
- (2) As used in this chapter:
  - (a) "Division" means the Division of Archives and Records Service.
  - (b)
    - (i) "Executive branch agency" means the same as that term is defined in Section 63A-16-102.
    - (ii) "Executive branch agency" includes a state agency, as defined in Subsection 67-1-17(1)(d).
  - (c)
    - (i) "Personal identifying information" means information about an individual that:
      - (A) identifies, or can be used to identify, an individual;
      - (B) distinguishes an individual from one or more other individuals; or

- (C) is, or can be, logically associated with other information or data, through technology or otherwise, to identify an individual or distinguish an individual from one or more other individuals.
- (ii) "Personal identifying information" includes information identified as personal identifying information in accordance with the rules described in Section 63A-12-104.
- (d) "Privacy annotation" means a summary, described in Subsection 63A-12-115(2) and rules made by the executive director under Subsection 63A-12-104(2), that, for each record series that an executive branch agency collects, maintains, or uses:
  - (i) discloses whether the record series contains personal identifying information; and
  - (ii) if the record series contains personal identifying information, includes the information described in Subsection 63A-12-115(2)(b).
- (e) "Record" means:
  - (i) the same as that term is defined in Section 63G-2-103; or
  - (ii) a video or audio recording of an interview, or a transcript of the video or audio recording, that is conducted at a Children's Justice Center established under Section 67-5b-102, the release of which is governed by Section 77-37-4.
- (f) "State archives" means the Division of Archives and Records Service.
- (g) "Vulnerable adult" means the same as that term is defined in Section 26B-6-201.
- (h) "Vulnerable record" means a record or data relating to:
  - (i) national security interests;
  - (ii) the care, custody, or control of a child;
  - (iii) a fiduciary trust over money;
  - (iv) health care of a child; or
  - (v) the following, in relation to a vulnerable adult:
    - (A) protection, health care, or other care; or
    - (B) the provision of food, shelter, clothing, assistance with an activity of daily living, or assistance with financial resource management.

Amended by Chapter 173, 2023 General Session

**63A-12-101 Division of Archives and Records Service created -- Duties.**

- (1) There is created the Division of Archives and Records Service within the department.
- (2) The state archives shall:
  - (a) administer the state's archives and records management programs, including storage of records, central reformatting programs, and quality control;
  - (b) apply fair, efficient, and economical management methods to the collection, creation, use, maintenance, retention, preservation, disclosure, and disposal of records and documents;
  - (c) establish standards, procedures, and techniques for the effective management and physical care of records;
  - (d) conduct surveys of office operations and recommend improvements in current records management practices, including the use of space, equipment, automation, and supplies used in creating, maintaining, storing, and servicing records;
  - (e) establish standards for the preparation of schedules providing for the retention of records of continuing value and for the prompt and orderly disposal of state records no longer possessing sufficient administrative, historical, legal, or fiscal value to warrant further retention;
  - (f) establish, maintain, and operate centralized reformatting lab facilities and quality control for the state;

- (g) provide staff and support services to the Records Management Committee created in Section 63A-12-112 and the State Records Committee created in Section 63G-2-501;
  - (h) develop training programs to assist records officers and other interested officers and employees of governmental entities to administer this chapter and Title 63G, Chapter 2, Government Records Access and Management Act;
  - (i) provide access to public records deposited in the archives;
  - (j) administer and maintain the Utah Public Notice Website established under Section 63A-16-601;
  - (k) provide assistance to any governmental entity in administering this chapter and Title 63G, Chapter 2, Government Records Access and Management Act;
  - (l) prepare forms for use by all governmental entities for a person requesting access to a record; and
  - (m) if the department operates the Division of Archives and Records Service as an internal service fund agency in accordance with Section 63A-1-109.5, submit to the Rate Committee established in Section 63A-1-114:
    - (i) the proposed rate schedule as required by Section 63A-1-114; and
    - (ii) other information or analysis requested by the Rate Committee.
- (3) The state archives may:
- (a) establish a report and directives management program;
  - (b) establish a forms management program; and
  - (c) in accordance with Section 63A-12-101, require that an individual undergo a background check if the individual:
    - (i) applies to be, or currently is, an employee or volunteer of the division; and
    - (ii) will have direct access to a vulnerable record in the capacity described in Subsection (3)(c)(i).
- (4) The executive director may direct the state archives to administer other functions or services consistent with this chapter and Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 173, 2023 General Session

**63A-12-102 State archivist -- Duties.**

- (1)
  - (a) With the approval of the governor, the executive director shall appoint the state archivist to serve as director of the state archives.
  - (b) The state archivist shall be qualified by archival training, education, and experience.
- (2) The state archivist is charged with:
  - (a) the custody and permanent retention and preservation of:
    - (i) the enrolled copy of the original 1895 Utah Constitution;
    - (ii) Indian war records;
    - (iii) oaths of office of all state officials, including legislative officials, required under Article IV, Section 10 of the Utah Constitution to take an oath of office;
    - (iv) all other records, excluding legislative records described in Section 63A-12-102.5, kept by or deposited with the state archivist for permanent preservation as provided by law; and
  - (b) the retention and preservation of legislative records, as provided in Section 63A-12-102.5.
- (3)

- (a) The state archivist is the official custodian of all noncurrent records of permanent or historic value that are not required by law to remain in the custody of the originating governmental entity.
- (b) Upon the termination of any governmental entity, its records shall be transferred to the state archives.

Amended by Chapter 291, 2023 General Session

**63A-12-102.5 Preservation of legislative records.**

(1) As used in this section:

- (a) "Historical legislative record" means a permanent legislative record or a supplemental legislative record that a legislative office transmitted to the state archivist before March 3, 2023, for retention and preservation.
- (b) "Legislative office" means:
  - (i) the Senate, the House of Representatives, or a staff office of the Legislature; or
  - (ii) as applicable, a body designated by the Legislative Management Committee to be responsible for:
    - (A) the retention of a legislative record; or
    - (B) the transmission of a legislative record to the division, as provided in this section, if the body chooses to transmit the legislative record to the division.
- (c) "Legislative retention schedule" means the retention schedule attached as Appendix A to the Legislative Management Committee Policy L. Legislative Records.
- (d) "Permanent legislative record" means:
  - (i) a joint proclamation issued by the president of the Senate and the speaker of the House of Representatives convening a session of the Legislature under Article VI, Section 2 of the Utah Constitution;
  - (ii) a session journal of the Senate or House of Representatives;
  - (iii) a recording of Senate or House of Representatives floor proceedings;
  - (iv) a numbered bill or resolution of the Senate or House of Representatives, including:
    - (A) a public substitute or amendment;
    - (B) a fiscal note or other information required to accompany a numbered bill or resolution; and
    - (C) an enrolled bill or resolution;
  - (v) an introduced article of impeachment or amendment to an article of impeachment;
  - (vi) as prepared by the Legislature and provided to the public, a list of actions taken on legislation during a legislative session or descriptions of the status of legislation considered during a legislative session;
  - (vii) a notice, agenda, handout or other public meeting material, recording, or minutes of the Legislative Management Committee, Executive Appropriations Committee, standing and interim committees of the Legislature, appropriations subcommittees of the Legislature, audit subcommittees of the Legislature, and other legislative committees, task forces, or commissions, excluding a rules or sifting committee of the Legislature;
  - (viii) a statutorily required budget or appropriations report;
  - (ix) an audit or review report of the Office of the Legislative Auditor General and a record that supports the conclusions and findings of the audit or review report;
  - (x) a version of the Utah Code after the Office of Legislative Research and General Counsel prepares an updated Utah Code database incorporating any duly enacted legislation making changes to the Utah Code;
  - (xi) the Laws of Utah;

- (xii) a biennial version of the Utah Constitution after the Office of Legislative Research and General Counsel incorporates into the Utah Constitution amendments that passed during the preceding regular general election; or
  - (xiii) a notice of appeal under Section 63G-9-401 relating to a decision of the board of examiners and a record accompanying a notice of appeal.
  - (e) "Supplemental legislative record" means a legislative record that is not a permanent legislative record.
- (2) A legislative office may, but is not required to, transmit a legislative record to the state archivist for retention and preservation as provided in this section.
- (3)
- (a) A legislative office shall consult with the state archivist as the legislative office determines the method and timing of transmitting a legislative record that the legislative office chooses to transmit to the state archivist for the state archivist's retention and preservation as provided in this section.
  - (b) The transmission of a digital copy of a legislative record is sufficient for purposes of the transmission of the legislative record to the state archivist.
- (4)
- (a) A legislative record that a legislative office transmits to the state archivist for retention and preservation remains in the control and legal custody of the legislative office and, although retained and preserved by the state archivist, does not become subject to the control or legal custody of the state archivist.
  - (b) The state archivist shall allow a legislative office full and continuing access to any legislative record transmitted to the state archivist for retention and preservation under this section.
- (5)
- (a) The state archivist may not disclose a supplemental legislative record without the prior written consent of the legislative office that transmitted the supplemental legislative record to the state archivist.
  - (b) If the state archivist receives a subpoena or other request for a supplemental legislative record, the state archivist shall immediately provide written notice of the subpoena or other request to:
    - (i) the legislative office that transmitted the supplemental legislative record to the state archivist; and
    - (ii) legislative general counsel.
- (6) The state archivist shall:
- (a) permanently retain and preserve a historical legislative record;
  - (b) permanently retain and preserve a permanent legislative record that a legislative office chooses to transmit to the state archivist after March 3, 2023; and
  - (c) retain and preserve, according to the legislative retention schedule, a supplemental legislative record that a legislative office chooses to transmit to the state archivist for retention and preservation after March 3, 2023.

Enacted by Chapter 291, 2023 General Session

**63A-12-103 Duties of governmental entities.**

The chief administrative officer of each governmental entity shall:

- (1) establish and maintain an active, continuing program for the economical and efficient management of the governmental entity's records as provided by this chapter and Title 63G, Chapter 2, Government Records Access and Management Act;

- (2) appoint one or more records officers who will be trained to work with the state archives in the care, maintenance, scheduling, disposal, classification, designation, access, and preservation of records;
- (3) ensure that officers and employees of the governmental entity that receive or process records requests receive required training on the procedures and requirements of this chapter and Title 63G, Chapter 2, Government Records Access and Management Act;
- (4) make and maintain adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the governmental entity designed to furnish information to protect the legal and financial rights of persons directly affected by the entity's activities;
- (5) submit to the state archivist proposed schedules of records for final approval by the Records Management Committee created in Section 63A-12-112;
- (6) cooperate with the state archivist in conducting surveys made by the state archivist;
- (7) comply with rules issued by the Department of Government Operations as provided by Section 63A-12-104;
- (8) report to the state archives the designation of record series that it maintains;
- (9) report to the state archives the classification of each record series that is classified; and
- (10) establish and report to the state archives retention schedules for objects that the governmental entity determines are not defined as a record under Section 63G-2-103, but that have historical or evidentiary value.

Amended by Chapter 344, 2021 General Session

**63A-12-104 Rulemaking authority.**

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
  - (a) the state archivist may, for an executive branch agency, make rules establishing procedures for the collection, storage, designation, classification, access, mediation for records access, and management of records under this chapter and Title 63G, Chapter 2, Government Records Access and Management Act; and
  - (b) a department may make rules specifying at which level within the department the requirements described in this chapter will be undertaken.
- (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the executive director shall, in consultation with the state archivist and the chief privacy officer, make rules for an executive branch agency that establish:
  - (a) requirements for making an inventory of each record series that contains personal identifying information, including:
    - (i) information collected as part of the inventory;
    - (ii) regularly reviewing, updating, and maintaining the inventory; and
    - (iii) reporting the inventory to the chief privacy officer;
  - (b) a list of information, categories of information, or types of information expressly designated as personal identifying information, in accordance with the criteria described in Subsections 63A-12-100.5(2)(c)(i) through (iii);
  - (c) criteria, variables, and principles for determining whether information in a record series, not expressly designated under Subsection (2)(b), is personal identifying information;
  - (d) a list and description of categories or types of personal identifying information that are collected, maintained, or used by executive branch agencies; and
  - (e) requirements for the form, content, format, review, and update of a privacy annotation.

- (3) The rules described in Subsection (2)(b) may incorporate, by reference, a data dictionary that a records officer appointed under Subsection 63A-12-103(2)(a) shall use in making the determination described in Subsection (2)(c).

Repealed and Re-enacted by Chapter 173, 2023 General Session

**63A-12-105 Records are property of the state -- Disposition -- Penalties for intentional mutilation or destruction.**

- (1) All records created or maintained by a state governmental entity are the property of the state and shall not be mutilated, destroyed, or otherwise damaged or disposed of, in whole or part, except as provided in this chapter and Title 63G, Chapter 2, Government Records Access and Management Act.
- (2)
  - (a) Except as provided in Subsection (2)(b), all records created or maintained by a political subdivision of the state are the property of the state and shall not be mutilated, destroyed, or otherwise damaged or disposed of, in whole or in part, except as provided in this chapter and Title 63G, Chapter 2, Government Records Access and Management Act.
  - (b) Records which constitute a valuable intellectual property shall be the property of the political subdivision.
  - (c) The state archives may, upon request from a political subdivision, take custody of any record series of the political subdivision. A political subdivision which no longer wishes to maintain custody of a record which must be retained under the political subdivision's retention schedule or the state archive's retention schedule shall transfer it to the state archives for safekeeping and management.
- (3)
  - (a) It is unlawful for a person to intentionally mutilate, destroy, or to otherwise damage or dispose of the record copy of a record knowing that the mutilation, destruction, damage, or disposal is in contravention of:
    - (i) a governmental entity's properly adopted retention schedule; or
    - (ii) if no retention schedule has been properly adopted by the governmental entity, the model retention schedule, as provided in Section 63G-2-604.
  - (b) Violation of this Subsection (3) is a class B misdemeanor.
  - (c) An employee of a governmental entity that violates this Subsection (3) may be subject to disciplinary action as provided under Section 63G-2-804.

Amended by Chapter 44, 2009 General Session

**63A-12-106 Certified and microphotographed copies.**

- (1) Upon demand, the state archives shall furnish certified copies of a record in the state archives's exclusive custody that is classified public or that is otherwise determined to be public under this chapter by the originating governmental entity, the State Records Committee created in Section 63G-2-501, or a court of law. When certified by the state archivist under the seal of the state archives, a copy has the same legal force and effect as if certified by the originating governmental entity.
- (2) The state archives may microphotograph records when the state archives determines that microphotography is an efficient and economical way to care, maintain, and preserve the record. A transcript, exemplification, or certified copy of a microphotograph has the same legal



force and effect as the original. Upon review and approval of the microphotographed film by the state archivist, the source documents may be destroyed.

- (3) The state archives may allow another governmental entity to microphotograph records in accordance with standards set by the state archives.

Amended by Chapter 254, 2019 General Session

**63A-12-107 Right to replevin.**

To secure the safety and preservation of records, the state archivist or the state archivist's representative may examine all records. On behalf of the state archivist, the attorney general may replevin any records that are not adequately safeguarded.

Renumbered and Amended by Chapter 382, 2008 General Session

**63A-12-108 Inspection and summary of record series -- Data dictionary.**

- (1) State archives shall provide for public inspection of:
  - (a) the title and a summary description of each record series; and
  - (b) for an executive branch agency, the privacy annotation of each record series.
- (2) The department shall:
  - (a) post the data dictionary described in Subsection 63A-12-104(3) on the department's website; and
  - (b) maintain and update the data dictionary on a regular basis.

Amended by Chapter 173, 2023 General Session

**63A-12-110 Online training course.**

- (1) As used in this section, "records officer" is as defined in Section 63G-2-103.
- (2) The division shall:
  - (a) develop an online training course for records officers of all governmental entities and political subdivisions;
  - (b) make the online training course available on or before January 1, 2013;
  - (c) on an annual basis, provide certification to a records officer after the records officer successfully completes the online training course; and
  - (d) post a list on its website of all records officers, including for each:
    - (i) the name of the records officer;
    - (ii) the name of the governmental entity or political subdivision to which the records officer provides services as a records officer;
    - (iii) contact information for the records officer;
    - (iv) the most recent date on which the records officer completed the online training course; and
    - (v) the date on which the records officer's certification expires.
- (3) The online training course described in this section shall train a records officer regarding the provisions of:
  - (a) Title 63G, Chapter 2, Government Records Access and Management Act;
  - (b) rules made under Title 63G, Chapter 2, Government Records Access and Management Act; and
  - (c) other legal and policy matters relating to responding to a public records request.
- (4) The division:
  - (a) shall develop the online training course in consultation with the attorney general's office; and

- (b) may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Enacted by Chapter 377, 2012 General Session

**63A-12-111 Government records ombudsman.**

- (1)
  - (a) The director of the division shall appoint a government records ombudsman.
  - (b) The government records ombudsman may not be a member of the State Records Committee created in Section 63G-2-501.
- (2) The government records ombudsman shall:
  - (a) be familiar with the provisions of Title 63G, Chapter 2, Government Records Access and Management Act;
  - (b) serve as a resource for a person who is making or responding to a records request or filing an appeal relating to a records request;
  - (c) upon request, attempt to mediate disputes between requestors and responders; and
  - (d) on an annual basis, electronically transmit a written report to the Government Operations Interim Committee on the work performed by the government records ombudsman during the previous year.
- (3) The government records ombudsman may not testify, or be compelled to testify, before the State Records Committee created in Section 63G-2-501, another administrative body, or a court regarding a matter that the government records ombudsman provided services in relation to under this section.

Amended by Chapter 254, 2019 General Session

**63A-12-112 Records Management Committee -- Creation -- Membership -- Administration.**

- (1) There is created the Records Management Committee composed of the following seven members:
  - (a) the director of the Utah Historical Society or the director's designee;
  - (b) the director of the Division of Archives and Records Services or the director's designee; and
  - (c) five members appointed by the governor as follows:
    - (i) a member of the Utah State Bar who understands public records keeping under Title 63G, Chapter 2, Government Records Access and Management Act;
    - (ii) a member with experience in public finance;
    - (iii) an individual from the private sector whose principal professional responsibilities are to create or manage records;
    - (iv) a member representing political subdivisions, recommended by the Utah League of Cities and Towns; and
    - (v) a member representing the news media.
- (2)
  - (a) Except as provided in Subsection (2)(b), the governor shall appoint each member to a four-year term.
  - (b) Notwithstanding Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of committee members' terms to ensure that the terms of members appointed by the governor are staggered so that approximately half of the committee members appointed by the governor are appointed every two years.
  - (c) Each appointed member of the committee is eligible for reappointment for one additional term.

- (3) When a vacancy occurs in the membership of the committee for any reason, the applicable appointing authority shall appoint a replacement for the unexpired term.
- (4) A member of the Records Management Committee may not receive compensation or benefits for the member's service on the committee, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 160, 2023 General Session

**63A-12-113 Records Management Committee -- Duties.**

- (1) The Records Management Committee shall:
  - (a) appoint a chair from among the committee's members; and
  - (b) review and determine whether to approve each schedule for the retention and disposal of records, including a proposed schedule submitted to the committee under Section 63G-2-604, within three months after the day on which the proposed schedule is submitted to the committee.
- (2) The Records Management Committee may make recommendations to a governmental entity regarding the entity's management of records.
- (3) Four members of the Records Management Committee are a quorum for the transaction of business.
- (4) The state archivist shall provide staff and support services for the Records Management Committee.
- (5) The Office of the Attorney General shall provide counsel to the Records Management Committee.

Enacted by Chapter 254, 2019 General Session

**63A-12-114 Utah Open Records Portal Website.**

- (1) As used in this section:
  - (a) "Governmental entity" means the same as that term is defined in Section 63G-2-103.
  - (b) "Website" means the Utah Open Records Portal Website created in this section.
- (2) There is created the Utah Open Records Portal Website to be administered by the division.
- (3) Unless otherwise provided by a governmental entity, the website shall serve as an additional point of access for requests for records under Title 63G, Chapter 2, Government Records Access and Management Act.
- (4) The division is responsible for:
  - (a) establishing and maintaining the website, with the technical assistance of the Division of Technology Services, including the provision of equipment, resources, and personnel as necessary;
  - (b) providing a mechanism for governmental entities to gain access to the website for the purpose of posting, modifying, and maintaining records; and
  - (c) maintaining an archive of all records posted to the website.
- (5) The timing for posting and the content of records posted to the website is the responsibility of the governmental entity posting the record.

Enacted by Chapter 84, 2021 General Session

**63A-12-115 Privacy annotation for records series -- Requirements -- Content.**

- (1)
  - (a) Before January 1, 2026, an executive branch agency shall, for each record series that the executive branch agency collects, maintains, or uses, evaluate the record series and make a privacy annotation that completely and accurately complies with Subsection (2) and the rules described in Subsection 63A-12-104(2)(e).
  - (b) Beginning on January 1, 2026, an executive branch agency may not collect, maintain, or use personal identifying information unless the record series for which the personal identifying information is collected, maintained, or used includes a privacy annotation that completely and accurately complies with Subsection (2) and the rules described in Subsection 63A-12-104(2)(e).
- (2) A privacy annotation shall include the following:
  - (a) if the record series does not include personal identifying information, a statement indicating that the record series does not include personal identifying information;
  - (b) if the record series includes personal identifying information:
    - (i) an inventory of the personal identifying information included in the record series; and
    - (ii) for the personal identifying information described in Subsection (2)(b)(i):
      - (A) the purpose for which the executive branch agency collects, keeps, or uses the personal identifying information;
      - (B) a citation to the executive branch agency's legal authority for collecting, keeping, or using the personal identifying information; and
      - (C) any other information required by state archives by rule under Subsection 63A-12-104(2)(e).

Enacted by Chapter 173, 2023 General Session

**63A-12-116 Background check for individuals with direct access to a vulnerable record.**

- (1) If, under Subsection 63A-12-101(3)(c), state archives requires an individual to undergo a background check:
  - (a) the individual shall:
    - (i) submit to state archives, in a form designated by state archives, a fingerprint card and other information required by state archives for the background check; and
    - (ii) consent to a criminal background check by the Federal Bureau of Investigation, the Bureau of Criminal Identification, or any other state entity that performs criminal background checks; and
  - (b) state archives shall:
    - (i) submit the fingerprint card and information described in Subsection (1)(a)(i) to the Utah Bureau of Criminal Identification; and
    - (ii) pay all fees required to conduct the background check, including fees described in Subsection 53-10-108(15)(a) and fees required by the Federal Bureau of Investigation.
- (2) The Bureau of Criminal Identification shall provide all results of a criminal background check described in this section to state archives, including results from state, regional, and nationwide background checks.
- (3) State archives may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
  - (a) establish procedures for requiring and conducting a background check under this section; and

- (b) specify requirements for the information and fingerprint card required for a background check under this section.

Enacted by Chapter 173, 2023 General Session

**Chapter 13**  
**Office of Inspector General of Medicaid Services**  
**Part 1**  
**General Provisions**

**63A-13-101 Title.**

This chapter is known as "Office of Inspector General of Medicaid Services."

Renumbered and Amended by Chapter 12, 2013 General Session

**63A-13-102 Definitions.**

As used in this chapter:

- (1) "Abuse" means:
  - (a) an action or practice that:
    - (i) is inconsistent with sound fiscal, business, or medical practices; and
    - (ii) results, or may result, in unnecessary Medicaid related costs; or
  - (b) reckless or negligent upcoding.
- (2) "Claimant" means a person that:
  - (a) provides a service; and
  - (b) submits a claim for Medicaid reimbursement for the service.
- (3) "Department" means the Department of Health and Human Services created in Section 26B-1-201.
- (4) "Division" means the Division of Integrated Healthcare, created in Section 26B-3-102.
- (5) "Extrapolation" means a method of using a mathematical formula that takes the audit results from a small sample of Medicaid claims and projects those results over a much larger group of Medicaid claims.
- (6) "Fraud" means an intentional or knowing:
  - (a) deception, misrepresentation, or upcoding in relation to Medicaid funds, costs, a claim, reimbursement, or services; or
  - (b) violation of a provision of Sections 26B-3-1102 through 26B-3-1106.
- (7) "Fraud unit" means the Medicaid Fraud Control Unit of the attorney general's office.
- (8) "Health care professional" means a person licensed under:
  - (a) Title 58, Chapter 5a, Podiatric Physician Licensing Act;
  - (b) Title 58, Chapter 16a, Utah Optometry Practice Act;
  - (c) Title 58, Chapter 17b, Pharmacy Practice Act;
  - (d) Title 58, Chapter 24b, Physical Therapy Practice Act;
  - (e) Title 58, Chapter 31b, Nurse Practice Act;
  - (f) Title 58, Chapter 40, Recreational Therapy Practice Act;
  - (g) Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act;

- (h) Title 58, Chapter 42a, Occupational Therapy Practice Act;
  - (i) Title 58, Chapter 44a, Nurse Midwife Practice Act;
  - (j) Title 58, Chapter 49, Dietitian Certification Act;
  - (k) Title 58, Chapter 60, Mental Health Professional Practice Act;
  - (l) Title 58, Chapter 67, Utah Medical Practice Act;
  - (m) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
  - (n) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;
  - (o) Title 58, Chapter 70a, Utah Physician Assistant Act; and
  - (p) Title 58, Chapter 73, Chiropractic Physician Practice Act.
- (9) "Inspector general" means the inspector general of the office, appointed under Section 63A-13-201.
- (10) "Office" means the Office of Inspector General of Medicaid Services, created in Section 63A-13-201.
- (11) "Provider" means a person that provides:
- (a) medical assistance, including supplies or services, in exchange, directly or indirectly, for Medicaid funds; or
  - (b) billing or recordkeeping services relating to Medicaid funds.
- (12) "Upcoding" means assigning an inaccurate billing code for a service that is payable or reimbursable by Medicaid funds, if the correct billing code for the service, taking into account reasonable opinions derived from official published coding definitions, would result in a lower Medicaid payment or reimbursement.
- (13)
- (a) "Waste" means the act of using or expending a resource carelessly, extravagantly, or to no purpose.
  - (b) "Waste" includes an activity that:
    - (i) does not constitute abuse or necessarily involve a violation of law; and
    - (ii) relates primarily to mismanagement, an inappropriate action, or inadequate oversight.

Amended by Chapter 329, 2023 General Session

## Part 2 Office and Powers

### **63A-13-201 Creation of office -- Inspector general -- Appointment -- Term.**

- (1) There is created an independent entity within the department known as the "Office of Inspector General of Medicaid Services."
- (2) The governor shall:
- (a) appoint the inspector general of Medicaid services with the advice and consent of the Senate; and
  - (b) establish the salary for the inspector general of Medicaid services based upon a recommendation from the Division of Human Resource Management which shall be based on a market salary survey conducted by the Division of Human Resource Management.
- (3) A person appointed as the inspector general shall have the following qualifications:
- (a) a general knowledge of the type of methodology and controls necessary to audit, investigate, and identify fraud, waste, and abuse;
  - (b) strong management skills;

- (c) extensive knowledge of performance audit methodology;
  - (d) the ability to oversee and execute an audit; and
  - (e) strong interpersonal skills.
- (4) The inspector general of Medicaid services:
- (a) shall serve a term of four years; and
  - (b) may be removed by the governor, for cause.
- (5) If the inspector general is removed for cause, a new inspector general shall be appointed, with the advice and consent of the Senate, to serve the remainder of the term of the inspector general of Medicaid services who was removed for cause.
- (6) The Office of Inspector General of Medicaid Services:
- (a) is not under the supervision of, and does not take direction from, the executive director, except for administrative purposes;
  - (b) shall use the legal services of the state attorney general's office;
  - (c) shall submit a budget for the office directly to the department;
  - (d) except as prohibited by federal law, is subject to:
    - (i) Title 51, Chapter 5, Funds Consolidation Act;
    - (ii) Title 51, Chapter 7, State Money Management Act;
    - (iii) Title 63A, Utah Government Operations Code;
    - (iv) Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
    - (v) Title 63G, Chapter 4, Administrative Procedures Act;
    - (vi) Title 63G, Chapter 6a, Utah Procurement Code;
    - (vii) Title 63J, Chapter 1, Budgetary Procedures Act;
    - (viii) Title 63J, Chapter 2, Revenue Procedures and Control Act;
    - (ix) Chapter 17, Utah State Personnel Management Act;
    - (x) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;
    - (xi) Title 52, Chapter 4, Open and Public Meetings Act;
    - (xii) Title 63G, Chapter 2, Government Records Access and Management Act; and
    - (xiii) coverage under the Risk Management Fund created under Section 63A-4-201;
  - (e) when requested, shall provide reports to the governor, the president of the Senate, or the speaker of the House; and
  - (f) shall adopt administrative rules to establish policies for employees that are substantially similar to the administrative rules adopted by the Division of Human Resource Management.

Amended by Chapter 344, 2021 General Session

**63A-13-202 Duties and powers of inspector general and office.**

- (1) The inspector general of Medicaid services shall:
- (a) administer, direct, and manage the office;
  - (b) inspect and monitor the following in relation to the state Medicaid program:
    - (i) the use and expenditure of federal and state funds;
    - (ii) the provision of health benefits and other services;
    - (iii) implementation of, and compliance with, state and federal requirements; and
    - (iv) records and recordkeeping procedures;
  - (c) receive reports of potential fraud, waste, or abuse in the state Medicaid program;
  - (d) investigate and identify potential or actual fraud, waste, or abuse in the state Medicaid program;
  - (e) consult with the Centers for Medicaid and Medicare Services and other states to determine and implement best practices for:

- (i) educating and communicating with health care professionals and providers about program and audit policies and procedures;
  - (ii) discovering and eliminating fraud, waste, and abuse of Medicaid funds; and
  - (iii) differentiating between honest mistakes and intentional errors, or fraud, waste, and abuse, if the office enters into settlement negotiations with the provider or health care professional;
  - (f) obtain, develop, and utilize computer algorithms to identify fraud, waste, or abuse in the state Medicaid program;
  - (g) work closely with the fraud unit to identify and recover improperly or fraudulently expended Medicaid funds;
  - (h) audit, inspect, and evaluate the functioning of the division for the purpose of making recommendations to the Legislature and the department to ensure that the state Medicaid program is managed:
    - (i) in the most efficient and cost-effective manner possible; and
    - (ii) in a manner that promotes adequate provider and health care professional participation and the provision of appropriate health benefits and services;
  - (i) regularly advise the department and the division of an action that could be taken to ensure that the state Medicaid program is managed in the most efficient and cost-effective manner possible;
  - (j) refer potential criminal conduct, relating to Medicaid funds or the state Medicaid program, to the fraud unit;
  - (k) refer potential criminal conduct, including relevant data from the controlled substance database, relating to Medicaid fraud, to law enforcement in accordance with Title 58, Chapter 37f, Controlled Substance Database Act;
  - (l) determine ways to:
    - (i) identify, prevent, and reduce fraud, waste, and abuse in the state Medicaid program; and
    - (ii) balance efforts to reduce costs and avoid or minimize increased costs of the state Medicaid program with the need to encourage robust health care professional and provider participation in the state Medicaid program;
  - (m) recover improperly paid Medicaid funds;
  - (n) track recovery of Medicaid funds by the state;
  - (o) in accordance with Section 63A-13-502:
    - (i) report on the actions and findings of the inspector general; and
    - (ii) make recommendations to the Legislature and the governor;
  - (p) provide training to:
    - (i) agencies and employees on identifying potential fraud, waste, or abuse of Medicaid funds; and
    - (ii) health care professionals and providers on program and audit policies and compliance; and
  - (q) develop and implement principles and standards for the fulfillment of the duties of the inspector general, based on principles and standards used by:
    - (i) the Federal Offices of Inspector General;
    - (ii) the Association of Inspectors General; and
    - (iii) the United States Government Accountability Office.
- (2)
- (a) The office may, in fulfilling the duties under Subsection (1), conduct a performance or financial audit of:
    - (i) a state executive branch entity or a local government entity, including an entity described in Section 63A-13-301, that:
      - (A) manages or oversees a state Medicaid program; or



- (B) manages or oversees the use or expenditure of state or federal Medicaid funds; or
  - (ii) Medicaid funds received by a person by a grant from, or under contract with, a state executive branch entity or a local government entity.
- (b)
- (i) The office may not, in fulfilling the duties under Subsection (1), amend the state Medicaid program or change the policies and procedures of the state Medicaid program.
  - (ii) The office shall identify conflicts between the state Medicaid plan, department administrative rules, Medicaid provider manuals, and Medicaid information bulletins and recommend that the department reconcile inconsistencies. If the department does not reconcile the inconsistencies, the office shall report the inconsistencies to the Legislature's Administrative Rules Review and General Oversight Committee created in Section 63G-3-501.
  - (iii) Beginning July 1, 2013, the office shall review a Medicaid provider manual and a Medicaid information bulletin in accordance with Subsection (2)(b)(ii), prior to the department making the provider manual or Medicaid information bulletin available to the public.
- (c) Beginning July 1, 2013, the Department of Health shall submit a Medicaid provider manual and a Medicaid information bulletin to the office for the review required by Subsection (2)(b)(ii) prior to releasing the document to the public. The department and the Office of Inspector General of Medicaid Services shall enter into a memorandum of understanding regarding the timing of the review process under Subsection (2)(b)(iii).
- (3)
- (a) The office shall, in fulfilling the duties under this section to investigate, discover, and recover fraud, waste, and abuse in the Medicaid program, apply the state Medicaid plan, department administrative rules, Medicaid provider manuals, and Medicaid information bulletins in effect at the time the medical services were provided.
  - (b) A health care provider may rely on the policy interpretation included in a current Medicaid provider manual or a current Medicaid information bulletin that is available to the public.
- (4) The inspector general of Medicaid services, or a designee of the inspector general of Medicaid services within the office, may take a sworn statement or administer an oath.

Amended by Chapter 443, 2022 General Session

**63A-13-203 Memorandum of understanding with fraud unit.**

- The inspector general shall enter into a memorandum of understanding with the fraud unit to:
- (1) formalize communication, cooperation, coordination of efforts, and the sharing of information, on a regular basis, between the office and the fraud unit;
  - (2) provide for reporting criminal activity discovered by the office to the fraud unit;
  - (3) ensure that investigations and other actions by the office and the fraud unit do not conflict; and
  - (4) provide for the sharing and classification of records between the office and the fraud unit under the Government Records Access and Management Act.

Renumbered and Amended by Chapter 12, 2013 General Session

**63A-13-204 Selection and review of claims.**

- (1)
- (a) The office shall periodically select and review a representative sample of claims submitted for reimbursement under the state Medicaid program to determine whether fraud, waste, or abuse occurred.

- (b) The office shall limit its review for waste and abuse under Subsection (1)(a) to 36 months prior to the date of the inception of the investigation or 72 months if there is a credible allegation of fraud. In the event the office or the fraud unit determines that there is fraud as defined in Section 63A-13-102, then the statute of limitations defined in Section 26B-3-1115 shall apply.
- (2) The office may directly contact the recipient of record for a Medicaid reimbursed service to determine whether the service for which reimbursement was claimed was actually provided to the recipient of record.
- (3) The office shall:
  - (a) generate statistics from the sample described in Subsection (1) to determine the type of fraud, waste, or abuse that is most advantageous to focus on in future audits or investigations;
  - (b) ensure that the office, or any entity that contracts with the office to conduct audits:
    - (i) has on staff or contracts with a medical or dental professional who is experienced in the treatment, billing, and coding procedures used by the type of provider being audited; and
    - (ii) uses the services of the appropriate professional described in Subsection (3)(b)(i) if the provider that is the subject of the audit disputes the findings of the audit;
  - (c) ensure that a finding of overpayment or underpayment to a provider is not based on extrapolation, unless:
    - (i) there is a determination that the level of payment error involving the provider exceeds a 10% error rate:
      - (A) for a sample of claims for a particular service code; and
      - (B) over a three year period of time;
    - (ii) documented education intervention has failed to correct the level of payment error; and
    - (iii) the value of the claims for the provider, in aggregate, exceeds \$200,000 in reimbursement for a particular service code on an annual basis; and
  - (d) require that any entity with which the office contracts, for the purpose of conducting an audit of a service provider, shall be paid on a flat fee basis for identifying both overpayments and underpayments.
- (4)
  - (a) If the office, or a contractor on behalf of the department:
    - (i) intends to implement the use of extrapolation as a method of auditing claims, the department shall, prior to adopting the extrapolation method of auditing, report its intent to use extrapolation:
      - (A) to the Social Services Appropriations Subcommittee; and
      - (B) as required under Section 63A-13-502; and
    - (ii) determines Subsections (3)(c)(i) through (iii) are applicable to a provider, the office or the contractor may use extrapolation only for the service code associated with the findings under Subsections (3)(c)(i) through (iii).
  - (b)
    - (i) If extrapolation is used under this section, a provider may, at the provider's option, appeal the results of the audit based on:
      - (A) each individual claim; or
      - (B) the extrapolation sample.
    - (ii) Nothing in this section limits a provider's right to appeal the audit under Title 63G, Chapter 4, Administrative Procedures Act, the Medicaid program and its manual or rules, or other laws or rules that may provide remedies to providers.

Amended by Chapter 329, 2023 General Session

**63A-13-205 Placement of hold on claims for reimbursement -- Injunction.**

- (1) The inspector general or the inspector general's designee may, without prior notice, order a hold on the payment of a claim for reimbursement submitted by a claimant if there is reasonable cause to believe that the claim, or payment of the claim, constitutes fraud, waste, or abuse, or is otherwise inaccurate.
- (2) The office shall, within seven days after the day on which a hold described in Subsection (1) is ordered, notify the claimant that the hold has been placed.
- (3) The inspector general or the inspector general's designee may not maintain a hold longer than is necessary to determine whether the claim, or payment of the claim, constitutes fraud, waste, or abuse, or is otherwise inaccurate.
- (4) A claimant may, at any time during which a hold is in place, appeal the hold under Title 63G, Chapter 4, Administrative Procedures Act.
- (5) If a claim is approved or denied before a hearing is held under Title 63G, Chapter 4, Administrative Procedures Act, the appeal shall be dismissed as moot.
- (6) The inspector general may request that the attorney general's office seek an injunction to prevent a person from disposing of an asset that is potentially subject to recovery by the state to recover funds due to a person's fraud or abuse.
- (7) The department and the division shall fully comply with a hold ordered under this section.

Renumbered and Amended by Chapter 12, 2013 General Session

**Part 3  
Investigation or Audit**

**63A-13-301 Access to records -- Retention of designation under Government Records Access and Management Act.**

- (1) In order to fulfill the duties described in Section 63A-13-202, and in the manner provided in Subsection (4), the office shall have unrestricted access to all records of state executive branch entities, all local government entities, and all providers relating, directly or indirectly, to:
  - (a) the state Medicaid program;
  - (b) state or federal Medicaid funds;
  - (c) the provision of Medicaid related services;
  - (d) the regulation or management of any aspect of the state Medicaid program;
  - (e) the use or expenditure of state or federal Medicaid funds;
  - (f) suspected or proven fraud, waste, or abuse of state or federal Medicaid funds;
  - (g) Medicaid program policies, practices, and procedures;
  - (h) monitoring of Medicaid services or funds; or
  - (i) a fatality review of a person who received Medicaid funded services.
- (2) The office shall have access to information in any database maintained by the state or a local government to verify identity, income, employment status, or other factors that affect eligibility for Medicaid services.
- (3) The records described in Subsections (1) and (2) include records held or maintained by the department, the division, the Department of Health and Human Services, the Department of Workforce Services, a local health department, a local mental health authority, or a school district. The records described in Subsection (1) include records held or maintained by a

provider. When conducting an audit of a provider, the office shall, to the extent possible, limit the records accessed to the scope of the audit.

- (4) A record, described in Subsection (1) or (2), that is accessed or copied by the office:
  - (a) may be reviewed or copied by the office during normal business hours, unless otherwise requested by the provider or health care professional under Subsection (4)(b);
  - (b) unless there is a credible allegation of fraud, shall be accessed, reviewed, and copied in a manner, on a day, and at a time that is minimally disruptive to the health care professional's or provider's care of patients, as requested by the health care professional or provider;
  - (c) may be submitted electronically;
  - (d) may be submitted together with other records for multiple claims; and
  - (e) if it is a government record, shall retain the classification made by the entity responsible for the record, under Title 63G, Chapter 2, Government Records Access and Management Act.
- (5) Except as provided in Subsection (7), notwithstanding any provision of state law to the contrary, the office shall have the same access to all records, information, and databases to which the department or the division has access.
- (6) The office shall comply with the requirements of federal law, including the Health Insurance Portability and Accountability Act of 1996 and 42 C.F.R., Part 2, relating to the office's:
  - (a) access, review, retention, and use of records; and
  - (b) use of information included in, or derived from, records.
- (7) The office's access to data held by the Health Data Committee:
  - (a) is not subject to this section; and
  - (b) is subject to Title 26B, Chapter 8, Part 5, Utah Health Data Authority.

Amended by Chapter 329, 2023 General Session

**63A-13-302 Access to employees -- Cooperating with investigation or audit.**

- (1) The office shall have access to interview the following persons if the inspector general determines that the interview may assist the inspector general in fulfilling the duties described in Section 63A-13-202:
  - (a) a state executive branch official, executive director, director, or employee;
  - (b) a local government official or employee;
  - (c) a consultant or contractor of a person described in Subsection (1)(a) or (b); or
  - (d) a provider or a health care professional or an employee of a provider or a health care professional.
- (2) A person described in Subsection (1) and each supervisor of the person shall fully cooperate with the office by:
  - (a) providing the office or the inspector general's designee with access to interview the person;
  - (b) completely and truthfully answering questions asked by the office or the inspector general's designee;
  - (c) providing the records, described in Subsection 63A-13-301(1), in the manner described in Subsection 63A-13-301(4), requested by the office or the inspector general's designee; and
  - (d) providing the office or the inspector general's designee with information relating to the office's investigation or audit.
- (3) A person described in Subsection (1)(a) or (b) and each supervisor of the person shall fully cooperate with the office by:
  - (a) providing records requested by the office or the inspector general's designee in the manner described in Subsection 63A-13-301(4); and

- (b) providing the office or the inspector general's designee with information relating to the office's investigation or audit, including information that is classified as private, controlled, or protected under Title 63G, Chapter 2, Government Records Access and Management Act.

Renumbered and Amended by Chapter 12, 2013 General Session  
Amended by Chapter 359, 2013 General Session

**63A-13-303 Cooperation and support.**

The department, the division, each consultant or contractor of the department or division, and each provider shall provide its full cooperation and support to the inspector general and the office in fulfilling the duties of the inspector general and the office.

Renumbered and Amended by Chapter 12, 2013 General Session

**63A-13-304 Interference with an investigation or audit prohibited.**

No person may:

- (1) interfere with or impede an investigation or audit of the office or fraud unit; or
- (2) interfere with the office relative to the content of a report, the conclusions reached in a report, or the manner of disclosing the results and findings of the office.

Renumbered and Amended by Chapter 12, 2013 General Session

**63A-13-305 Audit and investigation procedures.**

- (1)
  - (a) The office shall, in accordance with Section 63A-13-602, adopt administrative rules in consultation with providers and health care professionals subject to audit and investigation under this chapter to establish procedures for audits and investigations that are fair and consistent with the duties of the office under this chapter.
  - (b) If the providers and health care professionals do not agree with the rules proposed or adopted by the office under Subsection (1)(a) or Section 63A-13-602, the providers or health care professionals may:
    - (i) request a hearing for the proposed administrative rule or seek any other remedies under the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
    - (ii) request a review of the rule by the Legislature's Administrative Rules Review and General Oversight Committee created in Section 63G-3-501.
- (2) The office shall notify and educate providers and health care professionals subject to audit and investigation under this chapter of the providers' and health care professionals' responsibilities and rights under the administrative rules adopted by the office under the provisions of this section and Section 63A-13-602.

Amended by Chapter 443, 2022 General Session

**Part 4**  
**Subpoena Power**

**63A-13-401 Subpoena power -- Enforcement.**

- (1) The inspector general has the power to issue a subpoena to obtain a record or interview a person that the office or inspector general has the right to access under Part 3, Investigation or Audit.
- (2) A person who fails to comply with a subpoena issued by the inspector general or who refuses to testify regarding a matter upon which the person may be lawfully interrogated:
  - (a) is in contempt of the inspector general; and
  - (b) upon request by the inspector general, the attorney general shall:
    - (i) file a motion for an order to compel obedience to the subpoena with the district court;
    - (ii) file, with the district court, a motion for an order to show cause why the penalties established in Title 78B, Chapter 6, Part 3, Contempt, should not be imposed upon the person named in the subpoena for contempt of the inspector general; or
    - (iii) pursue other legal remedies against the person.
- (3) Upon receipt of a motion under Subsection (2), the court:
  - (a) shall expedite the hearing and decision on the motion; and
  - (b) may:
    - (i) order the person named in the subpoena to comply with the subpoena; and
    - (ii) impose any penalties authorized by Title 78B, Chapter 6, Part 3, Contempt, upon the person named in the subpoena for contempt of the inspector general.
- (4)
  - (a) If a subpoena described in this section requires the production of accounts, books, papers, documents, or other tangible items, the person or entity to whom it is directed may petition a district court to quash or modify the subpoena at or before the time specified in the subpoena for compliance.
  - (b) The inspector general may respond to a motion to quash or modify the subpoena by pursuing any remedy authorized by Subsection (3).
  - (c) If the court finds that a subpoena requiring the production of accounts, books, papers, documents, or other tangible items is unreasonable or oppressive, the court may quash or modify the subpoena.
- (5) Nothing in this section prevents the inspector general from seeking an extraordinary writ to remedy contempt of the inspector general.
- (6) Any party aggrieved by a decision of a court under this section may appeal that decision directly to the Utah Supreme Court.

Renumbered and Amended by Chapter 12, 2013 General Session

## **Part 5 Reporting**

### **63A-13-501 Duty to report potential Medicaid fraud to the office or fraud unit.**

- (1)
  - (a) Except as provided in Subsection (1)(b), a health care professional, a provider, or a state or local government official or employee who becomes aware of fraud, waste, or abuse shall report the fraud, waste, or abuse to the office or the fraud unit.
  - (b)
    - (i) The reporting exception in this Subsection (1)(b) does not apply to fraud and abuse. Suspected fraud and abuse shall be reported in accordance with Subsection (1).

- (ii) If a person described in Subsection (1)(a) reasonably believes that the suspected waste is a mistake, and is not intentional or knowing, the person may first report the suspected waste to the provider, health care professional, or compliance officer for the provider or health care professional.
  - (iii) The person described in Subsection (1)(b)(ii) shall report the suspected waste to the office or the fraud unit unless, within 30 days after the day on which the person reported the suspected waste to the provider, health care professional, or compliance officer, the provider, health care professional, or compliance officer demonstrates to the person that the suspected waste has been corrected.
- (2) A person who makes a report under Subsection (1) may request that the person's name not be released in connection with the investigation.
- (3) If a request is made under Subsection (2), the person's identity may not be released to any person or entity other than the office, the fraud unit, or law enforcement, unless a court of competent jurisdiction orders that the person's identity be released.

Renumbered and Amended by Chapter 12, 2013 General Session  
Amended by Chapter 359, 2013 General Session

**63A-13-502 Report and recommendations to governor and Infrastructure and General Government Appropriations Subcommittee.**

- (1) The inspector general of Medicaid services shall, on an annual basis, prepare an electronic report on the activities of the office for the preceding fiscal year.
- (2) The report shall include:
- (a) non-identifying information, including statistical information, on:
    - (i) the items described in Subsection 63A-13-202(1)(b) and Section 63A-13-204;
    - (ii) action taken by the office and the result of that action;
    - (iii) fraud, waste, and abuse in the state Medicaid program, including emerging trends of Medicaid fraud, waste, and abuse and the office's actions to identify and address the emerging trends;
    - (iv) the recovery of fraudulent or improper use of state and federal Medicaid funds, including total dollars recovered through cash recovery, credit adjustments, and rebilled claims;
    - (v) measures taken by the state to discover and reduce fraud, waste, and abuse in the state Medicaid program;
    - (vi) audits conducted by the office, including performance and financial audits;
    - (vii) investigations conducted by the office and the results of those investigations, including preliminary investigations;
    - (viii) administrative and educational efforts made by the office and the division to improve compliance with Medicaid program policies and requirements;
    - (ix) total cost avoidance attributed to an office policy or action;
    - (x) the number of complaints against Medicaid recipients received and disposition of those complaints;
    - (xi) the number of educational activities that the office provided to a provider or a state agency;
    - (xii) the number of credible allegations of fraud referred to the Medicaid fraud control unit under Section 63A-13-501; and
    - (xiii) the number of data pulls performed and general results of those pulls;
  - (b) recommendations on action that should be taken by the Legislature or the governor to:
    - (i) improve the discovery and reduction of fraud, waste, and abuse in the state Medicaid program;

- (ii) improve the recovery of fraudulently or improperly used Medicaid funds; and
  - (iii) reduce costs and avoid or minimize increased costs in the state Medicaid program;
  - (c) recommendations relating to rules, policies, or procedures of a state or local government entity; and
  - (d) services provided by the state Medicaid program that exceed industry standards.
- (3) The report described in Subsection (1) may not include any information that would interfere with or jeopardize an ongoing criminal investigation or other investigation.
- (4) On or before November 1 of each year, the inspector general of Medicaid services shall provide the electronic report described in Subsection (1) to the Infrastructure and General Government Appropriations Subcommittee of the Legislature and to the governor.

Amended by Chapter 286, 2019 General Session

## **Part 6**

### **Miscellaneous Provisions**

#### **63A-13-601 Provision of contract services to Office of Inspector General of Medicaid Services.**

- (1) The division and the assistant attorneys general assigned to the division shall provide, without charge, contract review, contract enforcement, and other contract management services to the office.
- (2) The division shall ensure that the services described in Subsection (1) are provided in an expeditious manner.
- (3) The attorney general shall designate one of the assistant attorneys general assigned to the division to give first priority to providing the services described in Subsection (1) to the office.
- (4) The office and the division shall enter into a memorandum of understanding in order to execute the requirements of this section in an effective and efficient manner.

Renumbered and Amended by Chapter 12, 2013 General Session

#### **63A-13-602 Rulemaking authority.**

The office may make rules, pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and Section 63A-13-305, that establish policies, procedures, and practices, in accordance with the provisions of this chapter, relating to:

- (1) inspecting and monitoring the state Medicaid Program;
- (2) discovering and investigating potential fraud, waste, or abuse in the State Medicaid program;
- (3) developing and implementing the principles and standards described in Subsection 63A-13-202(1)(q);
- (4) auditing, inspecting, and evaluating the functioning of the division under Subsection 63A-13-202(1)(h);
- (5) conducting an audit under Subsection 63A-13-202(1)(h) or (2); or
- (6) ordering a hold on the payment of a claim for reimbursement under Section 63A-13-205.

Renumbered and Amended by Chapter 12, 2013 General Session

Amended by Chapter 359, 2013 General Session



## Chapter 14 Review of Executive Branch Ethics Complaints

### Part 1 General Provisions

#### **63A-14-101 Title.**

- (1) This chapter is known as "Review of Executive Branch Ethics Complaints."
- (2) This part is known as "General Provisions."

Enacted by Chapter 426, 2013 General Session

#### **63A-14-102 Definitions.**

As used in this chapter:

- (1) "Commission" means the Independent Executive Branch Ethics Commission, created in Section 63A-14-202.
- (2) "Complainant" means an individual who files a complaint under Subsection 63A-14-402(1)(a).
- (3) "Executive branch elected official" means:
  - (a) the governor;
  - (b) the lieutenant governor;
  - (c) the state auditor;
  - (d) the state treasurer; or
  - (e) the attorney general.
- (4) "Improper purpose" includes harassing a respondent, causing unwarranted harm to a respondent's reputation, or causing unnecessary expenditure of public funds.
- (5) "Malfeasance in office" means an intentional act or omission relating to the duties of an executive branch elected official that:
  - (a) constitutes a crime; or
  - (b)
    - (i) constitutes a substantial breach of the trust imposed upon the executive branch elected official by the nature of the official's office; and
    - (ii) is against commonly accepted standards of honesty and morality.
- (6) "Respondent" means the executive branch elected official against whom an ethics complaint described in Section 63A-14-402 is filed.
- (7) "Violation" means a high crime, a misdemeanor, or malfeasance in office.

Amended by Chapter 461, 2018 General Session

### Part 2 Independent Executive Branch Ethics Commission

#### **63A-14-201 Title.**

This part is known as "Independent Executive Branch Ethics Commission."

Enacted by Chapter 426, 2013 General Session

**63A-14-202 Independent Executive Branch Ethics Commission -- Membership.**

- (1)
- (a) There is created the Independent Executive Branch Ethics Commission, consisting of the following five members appointed by the governor, each of whom shall be registered to vote in the state at the time of appointment:
    - (i) two members who served:
      - (A) as elected officials in state government no more recently than four years before the day on which the member is appointed; or
      - (B) in a management position in the state executive branch no more recently than four years before the day on which the member is appointed;
    - (ii) one member who:
      - (A) has served, but no longer actively serves, as a judge of a court in the state; or
      - (B) is a licensed attorney in the state and is not, and has not been, a judge; and
    - (iii) two citizen members.
  - (b) The governor shall make appointments to the commission as follows:
    - (i) each executive branch elected official, other than the governor, shall select, and provide to the governor, at least two names for potential appointment to one of the membership positions described in Subsection (1)(a);
    - (ii) the governor shall determine which of the executive branch elected officials described in Subsection (1)(b)(i) shall select names for which membership position;
    - (iii) the governor shall appoint to the commission one of the names provided by each executive branch elected official described in Subsection (1)(b)(i);
    - (iv) the governor shall directly appoint the remaining member of the commission; and
    - (v) if an executive branch elected official fails to submit names to the governor within 15 days after the day on which the governor makes the determination described in Subsection (1)(b)(ii), the governor shall directly appoint a person to fill the applicable membership position.
- (2) A member of the commission may not, during the member's term of office on the commission, act or serve as:
- (a) an officeholder as defined in Section 20A-11-101;
  - (b) an agency head as defined in Section 67-16-3;
  - (c) a lobbyist as defined in Section 36-11-102;
  - (d) a principal as defined in Section 36-11-102; or
  - (e) an employee of the state.
- (3)
- (a) Except as provided in Subsection (3)(b), each member of the commission shall serve a four-year term.
  - (b) The governor shall set the first term of two of the members of the commission at two years, so that approximately half of the commission is appointed, or reappointed, every two years.
  - (c) When a vacancy occurs in the commission's membership for any reason, the governor shall appoint a replacement member for the unexpired term of the vacating member, in accordance with Subsection (1).
  - (d) The governor may not appoint a member to serve more than two full terms, whether those terms are two or four years.
  - (e)
    - (i) The governor, or a majority of the commission, may remove a member from the commission only for cause.

- (ii) The governor may not remove a member from the commission during any period of time when the commission is investigating or considering a complaint alleging an ethics violation against the governor or lieutenant governor.
- (f) If a commission member determines that the commission member has a conflict of interest in relation to a complaint, the remaining members of the commission shall appoint an individual to serve in that member's place for the purpose of reviewing that complaint.
- (4)
  - (a) A member of the commission may not receive compensation or benefits for the member's service, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
  - (b) A member may decline to receive per diem and expenses for the member's service.
- (5)
  - (a) The commission members shall convene a meeting annually each January and elect, by majority vote, a chair from among the commission members.
  - (b) An individual may not serve as chair for more than two consecutive years.
- (6) The commission:
  - (a) is an independent entity established within the department for budgetary and general administrative purposes only; and
  - (b) is not under the direction or control of the department, the executive director, or any other officer or employee of the department.

Amended by Chapter 125, 2022 General Session

**63A-14-203 Independent Executive Branch Ethics Commission -- Meetings -- Annual summary report -- Staff -- Legal counsel -- Supplemental appropriations.**

- (1) The commission shall meet for the purpose of reviewing an ethics complaint when:
  - (a) except as otherwise expressly provided in this chapter, called to meet at the discretion of the chair; or
  - (b) called to meet by a majority vote of the commission.
- (2)
  - (a) A majority of the commission is a quorum.
  - (b) A majority vote of a quorum present constitutes the action of the commission.
- (3)
  - (a) The commission shall prepare an annual summary data report that contains:
    - (i) a general description of the activities of the commission during the past year;
    - (ii) the number of ethics complaints filed with the commission;
    - (iii) the number of ethics complaints reviewed by the commission;
    - (iv) a summary description of ethics complaints that formed the basis for a commission finding that an allegation in a complaint has merit; and
    - (v) an accounting of the commission's budget and expenditures.
  - (b) The commission shall submit the summary data report to the governor before December 1 each year.
  - (c) The summary data report is a public record.
- (4) The commission:
  - (a) shall employ a director to provide administrative support to the commission and to assist the commission in fulfilling the commission's duties;
  - (b) may employ additional staff, to work under the direction of the director;

- (c) shall contract with private legal counsel to provide legal services to the commission, as needed; and
  - (d) may, in consultation with the Office of the Legislative Fiscal Analyst, request supplemental appropriations to pay the costs of legal fees and other staffing needs that exceed the commission's budget due to the number or complexity of the ethics complaints filed with or considered by the commission in a fiscal year.
- (5)
- (a) Except as provided in Subsection (5)(b), staff for the commission may not perform services for any other person in state government.
  - (b) A person employed as staff for the commission may be the same person employed as staff for the Independent Legislative Ethics Commission, if the staff ensures that proper protections are in place to preserve the confidentiality to both bodies and to avoid a conflict of interest.
- (6) Except as expressly otherwise provided in this chapter, all meetings held under this chapter are closed to the public.

Amended by Chapter 461, 2018 General Session

### **Part 3**

## **General Powers and Procedures**

#### **63A-14-301 Title.**

This part is known as "General Powers and Procedures."

Enacted by Chapter 426, 2013 General Session

#### **63A-14-302 Authority to review complaint -- Grounds for complaint -- Limitations on filings.**

- (1) Subject to the requirements of this chapter, the commission may review an ethics complaint against an executive branch elected official if the complaint alleges that the executive branch elected official has committed a violation.
- (2) The commission may not review an ethics complaint filed against an executive branch elected official unless the complaint alleges conduct that, if true, would constitute grounds for impeachment under the Utah Constitution.
- (3) A complaint against an executive branch elected official may not allege a violation by the executive branch elected official for an act by an individual under the authority of the executive branch elected official, unless the complaint evidences that the executive branch elected official:
  - (a) encouraged, condoned, or ordered the act;
  - (b)
    - (i) before the individual engaged in the act, knew or should have known that the individual was likely to engage in the act; and
    - (ii) failed to take appropriate action to prevent the act;
  - (c)
    - (i) while the individual engaged in the act, knew or should have known that the individual was engaging in the act; and
    - (ii) failed to take appropriate action to stop the act; or
  - (d)

- (i) after the individual engaged in the act, knew or should have known that the individual engaged in the act; and
  - (ii) failed to take appropriate action in response to the act.
- (4) A complaint against an executive branch elected official may not allege a violation by the executive branch elected official for an individual under the authority of the executive branch elected official failing to act, unless the complaint evidences that the executive branch elected official:
  - (a) encouraged, condoned, or ordered the failure to act;
  - (b)
    - (i) before the individual failed to act, knew or should have known that the individual was likely to fail to act; and
    - (ii) failed to take appropriate action to prevent the failure to act;
  - (c)
    - (i) while the individual was failing to act, knew or should have known that the individual was failing to act; and
    - (ii) failed to take appropriate action to prevent the failure to act; or
  - (d)
    - (i) after the individual failed to act, knew or should have known that the individual failed to act; and
    - (ii) failed to take appropriate action in response to the failure to act.
- (5) Individuals who file a complaint for an alleged violation shall file the complaint within two years after the later of:
  - (a) the day on which the action or omission that forms the basis for the alleged violation occurs or would have been discovered by a reasonable person; or
  - (b) the day on which a plea or conviction that forms the basis for the allegation is entered.
- (6)
  - (a) A complaint may not contain an allegation that was previously reviewed by the commission, unless:
    - (i) the allegation is accompanied by material facts or circumstances supporting the allegation that were not raised or pled to the commission when the allegation was previously reviewed; and
    - (ii) the allegation and the general facts and circumstances supporting the allegation were only reviewed by the commission on one previous occasion.
  - (b) If an allegation in a complaint does not comply with the requirements of Subsection (6)(a), the commission or the chair shall dismiss the allegation with prejudice.
- (7)
  - (a) An individual may not file a complaint under this chapter that alleges the same conduct alleged in a grievance filed under Title 67, Chapter 19a, Grievance Procedures, unless the individual files the complaint within seven days before or after the day on which the individual files the grievance under Title 67, Chapter 19a, Grievance Procedures.
  - (b) If an allegation in a complaint does not comply with the requirements of Subsection (7)(a), the commission or the chair shall dismiss the allegation with prejudice.
  - (c) If an individual files a complaint under this chapter, in accordance with the time requirement described in Subsection (7)(a), that alleges the same conduct alleged in a grievance filed under Title 67, Chapter 19a, Grievance Procedures:
    - (i) the commission may stay proceedings before the commission in relation to the allegation, pending resolution of the grievance filed under Title 67, Chapter 19a, Grievance Procedures; and

- (ii) the Career Service Review Office, created in Section 67-19a-201, shall, upon request of the commission, inform the commission of the progress and final disposition of the grievance proceeding.
- (8) If the commission stays proceedings under Subsection (7)(c), the matter shall proceed as follows after the grievance under Title 67, Chapter 19a, Grievance Procedures, is resolved:
  - (a) if the individual who filed the complaint under this chapter desires to proceed with the complaint:
    - (i) the individual shall, within 15 days after the day on which a final decision is rendered under Title 67, Chapter 19a, Grievance Procedures, file a written document with the commission:
      - (A) describing the final decision; and
      - (B) stating that the individual desires to proceed with the complaint;
    - (ii) the Career Service Review Office, created in Section 67-19a-201, shall, upon request of the commission, provide copies of all records relating to the grievance described in Subsection (7)(c)(i), in accordance with Section 63G-2-206; and
    - (iii) the commission shall:
      - (A) review the records described in Subsection (8)(a)(ii);
      - (B) consider any additional evidence that the commission determines necessary;
      - (C) in the discretion of the commission, hear closing arguments from the parties; and
      - (D) comply with Section 63A-14-604; or
  - (b) if the individual who filed the complaint under this chapter does not desire to proceed with the complaint, the individual shall, within 15 days after the day on which a final decision is rendered under Title 67, Chapter 19a, Grievance Procedures, file a written document with the commission stating that the individual does not desire to proceed with the complaint.
- (9) The commission shall dismiss a complaint for which the commission stayed proceedings under Subsection (7)(c) if the individual who filed the complaint:
  - (a) fails to timely comply with Subsection (8)(a)(i); or
  - (b) files the document described in Subsection (8)(b).

Amended by Chapter 461, 2018 General Session

**63A-14-303 General powers -- Jurisdiction.**

- (1) The commission has jurisdiction only over an individual who is currently serving as an executive branch elected official.
- (2) The commission or the chair shall dismiss an ethics complaint if:
  - (a) the respondent resigns from the respondent's position as an executive branch elected official; or
  - (b) the House of Representatives convenes to consider impeachment of the executive branch elected official.
- (3)
  - (a) The commission may suspend commission proceedings during a period of time when a criminal investigation or prosecution, based in whole or in part on an allegation in the complaint, is pending.
  - (b) The time periods and deadlines described in this chapter are tolled during a suspension described in Subsection (3)(a).
- (4) The commission does not have jurisdiction over a violation that occurs before March 14, 2013.

Enacted by Chapter 426, 2013 General Session

## Part 4 Ethics Complaints

### 63A-14-401 Title.

This part is known as "Ethics Complaints."

Enacted by Chapter 426, 2013 General Session

### 63A-14-402 Ethics complaints -- Filing -- Form.

- (1)
  - (a) The following individuals may file an ethics complaint against an executive branch elected official if the complaint meets the requirements of Section 63A-14-302 and Subsection (1)(b):
    - (i) two or more executive branch elected officials, deputies of elected officials, executive directors of departments in the executive branch, or directors of divisions in the executive branch, if the complaint contains evidence or sworn testimony that:
      - (A) describes the facts and circumstances supporting the alleged violation; and
      - (B) is generally admissible under the Utah Rules of Evidence; or
    - (ii) two or more registered voters who currently reside in Utah and are not individuals described in Subsection (1)(a)(i), if, for each alleged violation pled in the complaint, at least one of those registered voters has personal knowledge of the facts and circumstances supporting the alleged violation.
  - (b) Complainants may file a complaint only against an individual who is serving as an executive branch elected official on the date that the complaint is filed.
- (2)
  - (a) The commission shall post, on the state's website, a conspicuous and clearly identified link to the name and address of a person authorized to accept a complaint on behalf of the commission.
  - (b) Complainants shall file a complaint with the person described in Subsection (2)(a).
  - (c) An individual may not file a complaint during the 60 calendar days immediately preceding:
    - (i) a regular primary election in which the accused executive branch elected official is a candidate; or
    - (ii) a regular general election in which the accused executive branch elected official is a candidate, unless the accused executive branch elected official is unopposed in the election.
- (3) The complainants shall ensure that each complaint filed under this rule is in writing and contains the following information:
  - (a) the name and position or title of the respondent;
  - (b) the name, address, and telephone number of each individual who is filing the complaint;
  - (c) a description of each alleged violation, including for each alleged violation:
    - (i) a reference to any criminal provision that the respondent is alleged to have violated;
    - (ii) a reference to any other provision of law that the respondent is alleged to have violated or failed to comply with;
    - (iii) the name of the complainant or complainants who have personal knowledge of the supporting facts and circumstances; and
    - (iv) the facts and circumstances supporting the allegation, which shall be provided by:
      - (A) copies of official records or documentary evidence; or

- (B) one or more affidavits, each of which shall comply with the format described in Subsection (4);
  - (d) a list of the witnesses that the complainants desire to call, including for each witness:
    - (i) the name, address, and, if available, one or more telephone numbers of the witness;
    - (ii) a brief summary of the testimony to be provided by the witness; and
    - (iii) a specific description of any documents or evidence the complainants desire the witness to produce;
  - (e) a statement that each complainant:
    - (i) has reviewed the allegations contained in the complaint and the affidavits and documents attached to the complaint;
    - (ii) believes that the complaint is submitted in good faith and not for any improper purpose; and
    - (iii) believes the allegations contained in the complaint to be true and accurate; and
  - (f) the signature of each complainant.
- (4) An affidavit described in Subsection (3)(c)(iv)(B) shall include:
- (a) the name, address, and telephone number of the affiant;
  - (b) a statement that the affiant has personal knowledge of the facts and circumstances described in the affidavit;
  - (c) the facts and circumstances testified to by the affiant;
  - (d) a statement that the affidavit is believed to be true and correct and that false statements are subject to penalties for perjury; and
  - (e) the signature of the affiant.

Amended by Chapter 461, 2018 General Session

**63A-14-403 Privacy of ethics complaint -- Dismissal -- Contempt.**

- (1)
- (a) Except as provided in Subsection (2) or (4), a person, including the complainant, the respondent, a commission member, or staff to the commission may not disclose the existence of a complaint, a response, or any information concerning an alleged violation that is the subject of a complaint.
  - (b) A person that violates this Subsection (1) may be held in contempt of the commission in accordance with Section 63A-14-705.
- (2) The restrictions described in Subsection (1) do not apply to:
- (a) a complaint or response that is publicly released by the commission and referred to the Legislature;
  - (b) the respondent's voluntary disclosure that the commission determined that all allegations in a complaint are without merit, after the commission issues an order dismissing the complaint under Section 63A-14-605;
  - (c) a disclosure by a respondent that is made solely for the purpose of, and only to the extent necessary for, retaining counsel or conducting an interview, seeking evidence, or taking other action to prepare to defend against a complaint;
  - (d) a communication between a commission member and the commission's attorney or a member of the commission's staff; or
  - (e) a disclosure to a person that is determined necessary, by a majority vote of the commission, to conduct the duties of the commission.
- (3) When a person makes a disclosure under Subsection (2)(c) or (e), the person making the disclosure shall inform the person to whom the disclosure is made of the nondisclosure requirements described in this section.



- (4) Nothing in this section prevents a person from disclosing facts or allegations regarding potential criminal violations to law enforcement authorities.
- (5) If the existence of an ethics complaint is publicly disclosed by a person, other than the respondent, an agent of the respondent, or a person who learns of the complaint under Subsection (2)(c) or (e), during the period that the commission is reviewing the complaint, the commission shall summarily dismiss the complaint without prejudice.

Amended by Chapter 461, 2018 General Session

**63A-14-405 Motion to disqualify commission member for conflict of interest.**

- (1) A complainant may file a motion to disqualify one or more members of the commission from participating in proceedings relating to the complaint if the individual files the motion within 20 days after the later of:
  - (a) the day on which the individual files the ethics complaint; or
  - (b) the day on which the individual knew or should have known of the grounds upon which the motion is based.
- (2) A respondent may file a motion to disqualify one or more members of the commission from participating in proceedings relating to the complaint if the respondent files the motion within 20 days after the later of:
  - (a) the day on which the respondent receives delivery of the complaint; or
  - (b) the day on which the respondent knew or should have known of the grounds upon which the motion is based.
- (3) A motion filed under this section shall include:
  - (a) a statement that the members to whom the motion relates have a conflict of interest that, under the circumstances, would lead a reasonable person to question the impartiality of the members;
  - (b) a detailed description of the grounds supporting the statement described in Subsection (3)(a); and
  - (c) a statement that the motion is filed in good faith, supported by an affidavit or declaration under penalty of Title 78B, Chapter 18a, Uniform Unsworn Declarations Act, stating that the motion and all accompanying statements and documents are true and correct to the best of the complainant's or respondent's knowledge.
- (4) A party may not file more than one motion to disqualify, unless the second or subsequent motion:
  - (a) is based on grounds of which the party was not aware, and could not have been aware, at the time of the earlier motion; and
  - (b) is accompanied by a statement, included in the affidavit or declaration described in Subsection (3)(c), explaining how and when the party first became aware of the grounds described in Subsection (4)(a).
- (5) The commission shall dismiss a motion filed under this section, with prejudice, if the motion:
  - (a) is not timely filed; or
  - (b) does not comply with the requirements of this section.
- (6) A member of the commission may:
  - (a) on the member's own motion, disqualify the member from participating in proceedings relating to a complaint if the member believes that the member has a conflict of interest that, under the circumstances, would lead a reasonable person to question the impartiality of the member; or

- (b) ask the commission to disqualify another member of the commission if the member believes that the member has a conflict of interest that, under the circumstances, would lead a reasonable person to question the impartiality of the member.
- (7)
- (a) When a party files a motion under this section, or when a commission member makes a request under Subsection (6)(b), the commission member for whom disqualification is sought may make the initial determination regarding whether the commission member has a conflict of interest.
  - (b) If a commission member described in Subsection (7)(a) determines that the commission member has a conflict of interest, the commission member shall disqualify the commission member from participating in the matter.
  - (c) If a commission member described in Subsection (7)(a) determines that the commission member does not have a conflict of interest, or declines to make the determination, the remainder of the commission shall, by majority vote, determine whether the commission member has a conflict of interest.
  - (d) A vote of the commission, under Subsection (7)(c), constitutes a final decision on the issue of a conflict of interest.
- (8) In making a determination under Subsection (7)(c), the commission may:
- (a) gather additional evidence;
  - (b) hear testimony; or
  - (c) request that the commission member who is the subject of the motion or request file an affidavit or declaration responding to questions posed by the commission.

Amended by Chapter 136, 2019 General Session

## **Part 5 Preliminary Action**

### **63A-14-501 Title.**

This part is known as "Preliminary Action."

Enacted by Chapter 426, 2013 General Session

### **63A-14-502 Initial review of ethics complaint -- Notice.**

- (1)
- (a) Except as provided in Subsection (1)(b), within five business days after the day on which the commission receives a complaint, the director of the commission, in consultation with the chair, shall examine the complaint to determine if the complaint is in compliance with Sections 63A-14-302 and 63A-14-402.
  - (b) The chair shall appoint another staff member or member of the commission to fulfill a duty described in Subsection (1)(a) if an individual described in Subsection (1)(a) has a conflict of interest in relation to the complaint.
- (2) If the chair determines that the complaint does not comply with Sections 63A-14-302 and 63A-14-402, the chair shall:
- (a) return the complaint to the first complainant named on the complaint with:
    - (i) a description of the reason for the noncompliance; and

- (ii) a copy of the applicable provisions of law; and
- (b) without disclosing the identity of the respondent, notify the other members of the commission that a complaint was filed against an executive branch elected official, but that the complaint was returned for noncompliance with the requirements of this chapter.
- (3) Each member of the commission and the commission's staff shall keep confidential the fact that a complaint was filed and returned until the commission submits the annual summary data report described in Section 63A-14-203.
- (4) If a complaint is returned for noncompliance with the requirements of this chapter, the complainants may file another complaint if the new complaint independently meets the requirements of Sections 63A-14-302 and 63A-14-402, including any requirements for timely filing.
- (5) If the chair determines that a complaint complies with the requirements of this chapter, the chair shall:
  - (a) accept the complaint;
  - (b) notify the members of the commission that:
    - (i) a complaint has been filed against an executive branch elected official; and
    - (ii) the chair has accepted the complaint; and
  - (c) within five business days after the day on which the commission receives the complaint, forward the complaint to the respondent via personal delivery or a delivery method that provides verification of receipt, and include with the complaint notice of the respondent's deadline for filing a response to the complaint.
- (6)
  - (a) The identity of the respondent and the allegations raised in a complaint are confidential pending the commission's review of the complaint.
  - (b) The fact that a complaint was filed is confidential until the commission publicly discloses the existence of the complaint by:
    - (i) issuing a finding that an allegation in the complaint has merit; or
    - (ii) submitting the annual summary data report described in Section 63A-14-203.

Amended by Chapter 461, 2018 General Session

**63A-14-503 Meeting of the commission for review of complaint -- Procedures.**

- (1) No later than 10 days after the day on which a complaint is accepted under Section 63A-14-502, the chair shall:
  - (a) except as provided in Subsection (2), schedule a commission meeting on a date:
    - (i) no later than 60 days after the day on which the chair accepts the complaint; and
    - (ii) no earlier than 40 days after the day on which the chair accepts the complaint;
  - (b) place the complaint on the agenda for consideration at that meeting;
  - (c) provide notice of the date, time, and location of the meeting to:
    - (i) the members of the commission;
    - (ii) the first complainant named in the complaint; and
    - (iii) the respondent; and
  - (d) provide a copy of the complaint to each member of the commission.
- (2) The commission may, by majority vote, change the date of the meeting for review of the complaint in order to accommodate:
  - (a) a meeting described in Subsection 63A-14-602(2); or
  - (b) necessary scheduling requirements.

- (3) The commission may conduct a vote to change the date of the meeting described in Subsection (2) by phone or electronic means if the members do not discuss any other matters relating to the complaint during the communication.

Enacted by Chapter 426, 2013 General Session

**63A-14-504 Response to ethics complaint -- Filing -- Form.**

- (1) A respondent shall file a response to a complaint with the commission no later than 20 days after the day on which the respondent receives delivery of the complaint.
- (2) A respondent shall ensure that the response is in writing and contains the following information:
  - (a) the name, address, and telephone number of the respondent;
  - (b) for each alleged violation in the complaint:
    - (i) each affirmative defense asserted in response to the allegation, including a general description of each affirmative defense and the facts and circumstances supporting the defense, supported by one or more affidavits, each of which shall comply with the format described in Subsection (3); and
    - (ii) the facts and circumstances refuting the allegation, which shall be provided by:
      - (A) copies of official records or documentary evidence; or
      - (B) one or more affidavits, each of which shall comply with the format described in Subsection (3);
  - (c) a list of the witnesses that the respondent desires to call, including for each witness:
    - (i) the name, address, and, if available, telephone number of the witness;
    - (ii) a brief summary of the testimony to be provided by the witness; and
    - (iii) a specific description of any documents or evidence that the respondent desires the witness to produce;
  - (d) a statement that the respondent:
    - (i) has reviewed the allegations contained in the complaint and the sworn statements and documents attached to the response; and
    - (ii) believes the contents of the response to be true and accurate; and
  - (e) the signature of the respondent.
- (3) An affidavit described in Subsection (2)(b) shall include:
  - (a) the name, address, and telephone number of the affiant;
  - (b) a statement that the affiant has personal knowledge of the facts and circumstances alleged in the affidavit;
  - (c) the facts and circumstances testified to by the affiant;
  - (d) a statement that the affidavit is believed to be true and correct and that false statements are subject to penalties for perjury; and
  - (e) the signature of the affiant.
- (4) Within five business days after the day on which the commission receives the response, the commission shall provide copies of the response to:
  - (a) each member of the commission; and
  - (b) the first named complainant on the complaint.

Amended by Chapter 461, 2018 General Session

**Part 6**

## Ethics Proceedings

### 63A-14-601 Title.

This part is known as "Ethics Proceedings."

Enacted by Chapter 426, 2013 General Session

### 63A-14-602 Review of ethics complaint by commission.

- (1) The scope of the commission's review of a complaint is limited to the alleged violations stated in the complaint.
- (2) Before holding a meeting for review of a complaint, the chair may schedule a separate meeting of the commission to:
  - (a) review a complaint, with or without the attendance of the parties, to determine if the complaint should be dismissed in whole or in part, by means of a majority vote of the commission, because the complaint pleads facts or circumstances against an executive branch elected official that have already been reviewed by the commission;
  - (b) hear motions or arguments from the parties, including hearing motions or arguments relating to dismissal of a complaint, admission of evidence, or procedures; or
  - (c) hold a vote of the commission, with or without the attendance of the parties, on procedural or commission business matters relating to a complaint.
- (3)
  - (a) The commission shall comply with the Utah Rules of Evidence except where the commission determines, by majority vote, that a rule is not compatible with the requirements of this chapter.
  - (b) The chair shall make rulings on admissibility of evidence consistent with the provisions of Section 63A-14-703.
- (4)
  - (a) The following individuals may be present during the presentation of testimony and evidence to the commission:
    - (i) the complainants, except that no more than three complainants may be present at one time;
    - (ii) the complainants' counsel, if applicable;
    - (iii) the respondent;
    - (iv) the respondent's counsel, if applicable;
    - (v) members of the commission;
    - (vi) staff to the commission;
    - (vii) a witness, while testifying before the commission; and
    - (viii) necessary security personnel.
  - (b) The complainants, respondent, and counsel for a complainant or respondent may be excluded from a portion of the meeting when the commission discusses administrative, procedural, legal, or evidentiary issues by:
    - (i) the order of the chair, subject to override as provided in Section 63A-14-703; or
    - (ii) a majority vote of the commission.
  - (c) When the commission deliberates at the conclusion of presentation of testimony and evidence, the commission shall ensure that those deliberations are closed to all persons except for the members of the commission and commission staff.

- (5) If a majority of the commission determines that a continuance is necessary to obtain further evidence and testimony, accommodate administrative needs, or accommodate the attendance of commission members, witnesses, or a party, the commission may:
- (a) after notice to the parties, adjourn and continue the meeting to a future date and time; and
  - (b) establish that future date and time by majority vote.

Enacted by Chapter 426, 2013 General Session

**63A-14-603 Record -- Recording of meetings.**

- (1)
- (a) Except as provided in Subsection (1)(b), an individual may not use a camera or other recording device in a meeting authorized by this chapter.
  - (b) The commission shall keep an audio or video recording of all portions of each meeting authorized by this part.
  - (c) If the commission elects, by a majority vote, to release in a public meeting the commission's finding that an allegation in the complaint has merit, the commission may, upon a majority vote of the commission, open the public meeting to cameras or other recording devices.
- (2) In addition to the recording required in Subsection (1)(b), the chair shall ensure that a record of the meeting is made, that includes:
- (a) official minutes taken during the meeting, if any;
  - (b) copies of all documents or other items admitted into evidence by the commission;
  - (c) copies of any documents or written orders or rulings issued by the chair or the commission; and
  - (d) any other information that a majority of the commission or the chair directs.
- (3) Except for a finding prepared by the commission that is classified as public under Section 63A-14-605, any recording, testimony, evidence, or other record of a meeting authorized by this chapter is a private record under Section 63G-2-302 and may not be disclosed.

Enacted by Chapter 426, 2013 General Session

**63A-14-604 Process for making a decision -- Deliberations.**

- (1)
- (a) After each party presents a closing argument, the commission shall, at the direction of the chair, begin private deliberations.
  - (b) The deliberations described in Subsection (1)(a) may be held:
    - (i) immediately after conclusion of the closing arguments; or
    - (ii) at a future meeting of the commission, on a date and time determined by a majority of the members of the commission.
- (2)
- (a) The chair shall conduct the deliberations.
  - (b) Upon a motion made by a commission member, the commission may exclude commission staff from all or a portion of the deliberations by a majority vote of the commission.
- (3)
- (a) During deliberations, for each allegation reviewed by the commission, each member shall determine and cast a vote stating whether the allegation is:
    - (i) proved, by clear and convincing evidence, to have merit; or
    - (ii) not proved to have merit.

- (b) A verbal roll call vote shall be taken on each allegation and each member's vote shall be recorded.
- (4)
  - (a) An allegation is determined to not have merit unless four of the five members of the commission vote that the allegation has merit.
  - (b) An allegation that is not determined to have merit is dismissed.
- (5)
  - (a) Before issuing an order or a finding under Section 63A-14-605, the commission may, upon a majority vote, reconsider and hold a new vote on an allegation.
  - (b) A motion to reconsider a vote may only be made by a member of the commission who voted in favor of the vote to be reconsidered.
- (6) At the conclusion of deliberations, the commission shall prepare an order or a finding in accordance with Section 63A-14-605.
- (7) The commission may not find that an allegation has merit if the allegation is based on an act by an individual under the authority of the executive branch elected official, unless the commission finds, by clear and convincing evidence, that the executive branch elected official:
  - (a) encouraged, condoned, or ordered the act;
  - (b)
    - (i) before the individual engaged in the act, knew or should have known that the individual was likely to engage in the act; and
    - (ii) failed to take appropriate action to prevent the act;
  - (c)
    - (i) while the individual engaged in the act, knew or should have known that the individual was engaging in the act; and
    - (ii) failed to take appropriate action to stop the act; or
  - (d)
    - (i) after the individual engaged in the act, knew or should have known that the individual engaged in the act; and
    - (ii) failed to take appropriate action in response to the act.
- (8) The commission may not find that an allegation has merit if the allegation is based on the failure of an individual under the authority of the executive branch elected official to act, unless the commission finds, by clear and convincing evidence, that the executive branch elected official:
  - (a) encouraged, condoned, or ordered the failure to act;
  - (b)
    - (i) before the individual failed to act, knew or should have known that the individual was likely to fail to act; and
    - (ii) failed to take appropriate action to prevent the failure to act;
  - (c)
    - (i) while the individual was failing to act, knew or should have known that the individual was failing to act; and
    - (ii) failed to take appropriate action to prevent the failure to act; or
  - (d)
    - (i) after the individual failed to act, knew or should have known that the individual failed to act; and
    - (ii) failed to take appropriate action in response to the failure to act.

Amended by Chapter 461, 2018 General Session

**63A-14-605 Order or finding of merit by the commission.**

- (1) If the commission determines that all allegations in the complaint are without merit, the commission shall:
  - (a) issue and enter into the record an order that the complaint is dismissed because no allegations in the complaint were found to have merit;
  - (b) classify all recordings, testimony, evidence, orders, findings, and other records directly relating to the meetings authorized by this part as private records under Section 63G-2-302;
  - (c) provide notice of the determination, in a manner determined by a majority vote of the commission, to:
    - (i) the respondent; and
    - (ii) the first complainant named on the complaint; and
  - (d) provide notice to each person named in Subsection (1)(c) that, under the provisions of Section 63A-14-403 and other provisions of this chapter, a person who discloses the findings of the commission in violation of any provision of this chapter is in contempt of the commission and is subject to penalties for contempt.
- (2) If the commission determines that one or more of the allegations in the complaint have merit, the commission shall:
  - (a) if one or more allegations were not found to have merit, enter into the record an order dismissing the allegations that were found not to have merit;
  - (b) within 30 business days after the day on which the commission makes the determination, prepare a written finding, for submission to the Legislature, that:
    - (i) lists the name of each complainant;
    - (ii) lists the name of the respondent;
    - (iii) states the date of the finding;
    - (iv) for each allegation that was found to have merit:
      - (A) describes the high crime, misdemeanor, or malfeasance in office allegedly committed by the respondent;
      - (B) states the number and names of commission members who voted that the allegation has merit and the number and names of commission members who voted that the allegation does not have merit;
      - (C) subject to Subsection (3), at the option of those members voting that the allegation has merit, includes a statement by one or all of those members stating the reasons that the members voted that the allegation has merit; and
      - (D) subject to Subsection (3), at the option of those members who voted that the allegation does not have merit, includes a statement by one or all of those members stating the reasons that the members voted that the allegation does not have merit;
  - (v) contains any general statement that is adopted for inclusion in the finding by a majority of the members of the commission;
  - (vi) describes the allegations found by the commission to have merit;
  - (vii) states the name of each member of the commission; and
  - (viii) is signed by each member of the commission;
- (c) direct staff to publicly release the finding, the complaint, and the response, subject to the redaction of any allegations that were dismissed; and
- (d) classify all other recordings, testimony, evidence, orders, findings, and other records directly relating to the meetings authorized by this chapter as private records under Section 63G-2-302.



- (3) A statement described in Subsection (2)(b)(iv)(C) or (D) may not cite specific evidence, specific testimony, or specific witnesses.
- (4) The commission shall ensure that, within five business days after the day on which the commission finishes preparing the written finding described in Subsection (2)(b):
  - (a) the complaint and the response are redacted to remove references to the allegations found by the commission to be without merit;
  - (b) a copy of the finding is made publicly available and provided to:
    - (i) the respondent;
    - (ii) the first complainant named on the complaint;
    - (iii) the speaker of the House of Representatives;
    - (iv) the president of the Senate; and
    - (v) the governor; and
  - (c) the following documents are made publicly available and are provided to the speaker of the House of Representatives and the president of the Senate:
    - (i) a cover letter generally describing the allegations in the edited complaint that are found by the commission to have merit;
    - (ii) a copy of the edited complaint;
    - (iii) a copy of the edited response; and
    - (iv) a copy of the finding.

Enacted by Chapter 426, 2013 General Session

**63A-14-606 Comments on complaint under review by Legislature.**

- (1) Except as provided in Subsection (2), while a complaint is under review by the Legislature, a member of the commission may not comment publicly or privately about the commission's decision, reasoning, or other matters relating to the ethics complaint, but may provide or refer a questioner to the commission's written finding.
- (2) Subsection (1) does not prohibit statements made:
  - (a) to an individual authorized by the Legislature to conduct an investigation for the purpose of assisting the Legislature in conducting proceedings related to impeachment or removal from office;
  - (b) to a legislative committee, the House, or the Senate in relation to proceedings for impeachment or trial of impeachment; or
  - (c) as part of a criminal investigation.

Enacted by Chapter 426, 2013 General Session

**Part 7**  
**General Provisions Governing Hearings on Ethics Complaints**

**63A-14-701 Title.**

This part is known as "General Provisions Governing Hearings on Ethics Complaints."

Enacted by Chapter 426, 2013 General Session

**63A-14-702 General procedures for conducting a hearing on an ethics complaint.**

- (1) In conducting a hearing on a complaint, the commission shall comply with the following process in the order specified:
  - (a) introduction and instructions for procedure and process, at the discretion of the chair;
  - (b) procedural motions, adoption of evidentiary standards, or other general matters;
  - (c) complainants' opening argument, to be presented by a complainant or complainants' counsel;
  - (d) complainants' presentation of evidence and witnesses in support of allegations in the complaint;
  - (e) consideration of motions to dismiss the complaint or motions for a directed verdict, as applicable;
  - (f) respondent's opening argument, to be presented by the respondent or respondent's counsel;
  - (g) respondent's presentation of evidence and witnesses refuting the allegations in the complaint;
  - (h) presentation of rebuttal evidence and witnesses by the complainants, at the discretion of the chair;
  - (i) presentation of rebuttal evidence and witnesses by the respondent, at the discretion of the chair;
  - (j) complainants' closing argument, to be presented by a complainant or complainants' counsel;
  - (k) respondent's closing argument, to be presented by the respondent or respondent's counsel;
  - (l) deliberations by the commission; and
  - (m) adoption of the commission's findings.
- (2) The commission may, in extraordinary circumstances, and consistent with due process considerations, vary the order described in Subsection (1) by majority vote and by providing notice to the parties.
- (3) In addition to witnesses or evidence subpoenaed at the request of a complainant or a respondent, the chair or the commission may, consistent with due process considerations, subpoena and schedule the examination of witnesses or evidence that the chair or the commission determines will assist the commission in making a determination on the merits of the complaint.

Enacted by Chapter 426, 2013 General Session

**63A-14-703 Chair as presiding judge.**

- (1) Except as expressly provided otherwise in this chapter, the chair is vested with the power to direct the commission during meetings authorized by this chapter.
- (2) Except as otherwise provided in this chapter, the commission may overrule a decision of the chair if:
  - (a) a member of the commission:
    - (i) states that the member desires to overrule the decision of the chair; and
    - (ii) states the basis for the member's objection to the decision of the chair; and
  - (b) a majority of the commission votes to overrule the decision of the chair.
- (3) The chair may set time limitations on any part of a meeting authorized by this chapter.

Enacted by Chapter 426, 2013 General Session

**63A-14-704 Subpoena powers.**

- (1) For all proceedings authorized by this chapter, the commission may issue a subpoena to:
  - (a) require the attendance of a witness; or
  - (b) direct the production of evidence.
- (2) The commission shall issue a subpoena under this section:

- (a) as required under Section 63A-14-706;
- (b) at the direction of the chair, if the chair determines that the testimony or evidence is relevant to the review of a complaint; or
- (c) upon a vote of a majority of the commission members.

Enacted by Chapter 426, 2013 General Session

**63A-14-705 Contempt of the commission -- Enforcement.**

- (1) Except as provided in Subsection (9), the following actions constitute contempt of the commission:
  - (a) disobedience to a direction of the commission or the chair in relation to actions and proceedings under this chapter;
  - (b) failure to answer a question during a commission meeting when directed to answer a question by:
    - (i) the chair, unless the direction is overridden by the commission under Section 63A-14-703; or
    - (ii) a majority of the members of the commission;
  - (c) failure to comply with a subpoena or other order issued under the authority of this chapter;
  - (d) violation of the provisions of Subsection 63A-14-403(1);
  - (e) violation of the communication provisions described in Section 63A-14-707;
  - (f) violation of a request to comply with a provision of this chapter by the chair or a majority of the members of the commission; or
  - (g) any other ground that is specified in statute or recognized at common law.
- (2) The following persons may authorize an enforcement action against a person in contempt of the commission under the provisions of this chapter:
  - (a) the chair, subject to the provisions of Section 63A-14-703; or
  - (b) a majority of the members of the commission;
- (3) If a person that is the subject of a subpoena issued under this chapter fails to comply with the subpoena, refuses to testify to a matter upon which the person may be lawfully interrogated, or is otherwise in contempt of the commission, the commission or the chair may:
  - (a) file in district court a motion for an order to compel obedience to a subpoena or a lawful order of the commission or the chair;
  - (b) file in district court a motion for an order to show cause why the penalties established in Title 78B, Chapter 6, Part 3, Contempt, should not be imposed upon the person for contempt of the commission; or
  - (c) pursue other remedies against a person in contempt of the commission.
- (4) The court shall expedite the hearing and decision on a motion described in Subsection (3).
- (5) A court may:
  - (a) order the person named in the subpoena, or subject to an order, to comply with the subpoena or order; or
  - (b) impose any penalties authorized by Title 78B, Chapter 6, Part 3, Contempt, upon the person named in the subpoena, subject to the order, or otherwise held in contempt of the commission.
- (6)
  - (a) If a subpoena issued under this chapter requires the production of accounts, books, papers, documents, or other tangible items, the person to whom the subpoena is directed may petition a district court to quash or modify the subpoena at or before the time specified in the subpoena for compliance.

- (b) The commission or the chair may respond to a motion to quash or modify a subpoena by taking an action described in Subsection (3).
- (c) If the court finds that a subpoena requiring the production of accounts, books, papers, documents, or other tangible items is unreasonable or oppressive, the court may quash or modify the subpoena.
- (7) Nothing in this section prevents the commission or the chair from seeking an extraordinary writ to remedy contempt of the commission.
- (8) A party aggrieved by a decision of a court under this section may appeal that action directly to the Utah Supreme Court.
- (9) An individual is not in contempt of the commission if the person's disobedience or failure to comply with a provision of Subsection (1) is due to a valid invocation of the person's Fifth Amendment right against self-incrimination.

Enacted by Chapter 426, 2013 General Session

**63A-14-706 Testimony and examination of witnesses -- Oath -- Procedure -- Contempt.**

- (1) The chair shall ensure that each witness listed in a complaint and response is subpoenaed for appearance at the hearing unless:
  - (a) the witness is unable to be properly identified or located; or
  - (b) service is otherwise determined to be impracticable.
- (2) The chair shall determine the scheduling and order of witnesses and presentation of evidence.
- (3) The commission may, by majority vote:
  - (a) overrule the chair's decision not to subpoena a witness under Subsection (1);
  - (b) modify the chair's determination on the scheduling and order of witnesses, and the presentation of evidence, under Subsection (2);
  - (c) decline to hear or call a witness who is requested by a complainant or a respondent;
  - (d) decline to review or consider evidence submitted in relation to an ethics complaint; or
  - (e) request and subpoena witnesses or evidence according to the procedures of Section 63A-14-704.
- (4)
  - (a) Each witness shall testify under oath.
  - (b) The chair or the chair's designee shall administer the oath to each witness.
- (5) After the oath is administered to a witness, the chair shall direct testimony as follows:
  - (a) allow the party that called the witness, or that party's counsel, to question the witness;
  - (b) allow the opposing party, or the opposing party's counsel, to cross-examine the witness;
  - (c) allow additional questioning by a party or a party's counsel as appropriate;
  - (d) give commission members the opportunity to question the witness; and
  - (e) as appropriate, allow further examination of the witness by the commission, or the parties or their counsel.
- (6)
  - (a) If a witness, a party, or a party's counsel objects to a question, the chair shall:
    - (i) direct the witness to answer; or
    - (ii) rule that the witness is not required to answer the question.
  - (b) If a witness declines to answer a question after the chair or a majority of the commission determines that the witness is required to answer the question, the witness may be held in contempt in accordance with the provisions of Section 63A-14-705.
- (7)

- (a) The chair or a majority of the members of the commission may direct a witness to furnish any relevant evidence for consideration if the witness brings the material voluntarily or was required to bring the material by subpoena.
- (b) If a witness declines to provide evidence in response to a subpoena, the witness may be held in contempt under Section 63A-14-705.

Enacted by Chapter 426, 2013 General Session

**63A-14-707 Communications of commission members.**

- (1) As used in this section, "third party" means a person who is not a member of the commission or staff to the commission.
- (2) While a complaint is under review by the commission, a member of the commission may not initiate, engage in, or consider any communications concerning the complaint with a third party unless:
  - (a) the communication is expressly permitted under the procedures established by this chapter; or
  - (b) the communication is made by the third party, in writing, simultaneously to:
    - (i) all members of the commission; and
    - (ii) a staff member of the commission.
- (3) While the commission is reviewing a complaint under this chapter, a commission member may communicate outside of the meetings or deliberations with another member of, or staff to, the commission, if the member's communication does not materially compromise the member's responsibility to independently review and make decisions in relation to the complaint.

Enacted by Chapter 426, 2013 General Session

**63A-14-708 Attorney fees and costs.**

- (1) A complainant:
  - (a) may, but is not required to, retain legal representation during the complaint review process; and
  - (b) is responsible for payment of the complainant's attorney fees and costs incurred.
- (2) A respondent:
  - (a) may, but is not required to, retain legal representation during the complaint review process; and
  - (b) except as provided in Subsection (3), is responsible for payment of the respondent's attorney fees and costs incurred.
- (3)
  - (a) If the commission determines that all allegations in the complaint are without merit, the respondent may file a request with the Executive Appropriations Committee of the Legislature for the payment of reasonable attorney fees and costs for legal representation during the complaint review process.
  - (b) If the Executive Appropriations Committee of the Legislature receives a request described in Subsection (3)(a), the Legislature may appropriate money to reimburse the respondent for some or all of the reasonable attorney fees and costs described in Subsection (3)(a).
- (4) An attorney who participates in a hearing before the commission shall comply with:
  - (a) the Rules of Professional Conduct established by the Utah Supreme Court;
  - (b) the procedures and requirements of this chapter; and
  - (c) the directions of the chair and the commission.

(5) A violation of Subsection (4) may constitute:

- (a) contempt of the commission under Section 63A-14-705; or
- (b) a violation of the Rules of Professional Conduct, subject to enforcement by the Utah State Bar.

Amended by Chapter 432, 2019 General Session

## **Chapter 15**

### **Political Subdivisions Ethics Review Commission**

#### **Part 1**

#### **General Provisions**

#### **63A-15-101 Title.**

This chapter is known as "Political Subdivisions Ethics Review Commission."

Renumbered and Amended by Chapter 461, 2018 General Session

#### **63A-15-102 Definitions.**

- (1) "Commission" means the Political Subdivisions Ethics Review Commission established in Section 63A-15-201.
- (2) "Complainant" means a person who files a complaint in accordance with Section 63A-15-501.
- (3) "Ethics violation" means a violation of:
  - (a) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;
  - (b) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or
  - (c) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.
- (4) "Local political subdivision ethics commission" means an ethics commission established by a political subdivision within the political subdivision or with another political subdivision by interlocal agreement in accordance with Section 63A-15-103.
- (5) "Political subdivision" means a county, municipality, school district, community reinvestment agency, special district, special service district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act, a local building authority, or any other governmental subdivision or public corporation.
- (6)
  - (a) "Political subdivision employee" means a person who is:
    - (i)
      - (A) in a municipality, employed as a city manager or non-elected chief executive on a full or part-time basis; or
      - (B) employed as the non-elected chief executive by a political subdivision other than a municipality on a full or part-time basis; and
    - (ii) subject to:
      - (A) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;
      - (B) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or
      - (C) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.
  - (b) "Political subdivision employee" does not include:

- (i) a person who is a political subdivision officer;
  - (ii) an employee of a state entity; or
  - (iii) a legislative employee as defined in Section 67-16-3.
- (7) "Political subdivision governing body" means:
- (a) for a county, the county legislative body as defined in Section 68-3-12.5;
  - (b) for a municipality, the council of the city or town;
  - (c) for a school district, the local board of education described in Section 53G-4-201;
  - (d) for a community reinvestment agency, the agency board described in Section 17C-1-203;
  - (e) for a special district, the board of trustees described in Section 17B-1-301;
  - (f) for a special service district:
    - (i) the legislative body of the county, city, or town that established the special service district, if no administrative control board has been appointed under Section 17D-1-301; or
    - (ii) the administrative control board of the special service district, if an administrative control board has been appointed under Section 17D-1-301;
  - (g) for an entity created by an interlocal agreement, the governing body of an interlocal entity, as defined in Section 11-13-103;
  - (h) for a local building authority, the governing body, as defined in Section 17D-2-102, that creates the local building authority; or
  - (i) for any other governmental subdivision or public corporation, the board or other body authorized to make executive and management decisions for the subdivision or public corporation.
- (8)
- (a) "Political subdivision officer" means a person elected in a political subdivision who is subject to:
    - (i) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;
    - (ii) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or
    - (iii) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.
  - (b) "Political subdivision officer" does not include:
    - (i) a person elected or appointed to a state entity;
    - (ii) the governor;
    - (iii) the lieutenant governor;
    - (iv) a member or member-elect of either house of the Legislature; or
    - (v) a member of Utah's congressional delegation.
- (9) "Respondent" means a person who files a response in accordance with Section 63A-15-604.

Amended by Chapter 16, 2023 General Session

**63A-15-103 Local ethics commission permitted -- Filing requirements.**

- (1) A political subdivision, other than a municipality described in Section 10-3-1311, a county described in Section 17-16a-11, or a school district may establish a local political subdivision ethics commission within the political subdivision to review a complaint against a political subdivision officer or employee subject to Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.
- (2) A political subdivision other than a school district may enter into an interlocal agreement with another political subdivision, in accordance with Title 11, Chapter 13, Interlocal Cooperation Act, to establish a local political subdivision ethics commission to review a complaint against a political subdivision officer or employee subject to Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.

- (3)
- (a) A person filing a complaint for an ethics violation of Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, shall file the complaint with:
    - (i) a local political subdivision ethics commission, if the political subdivision has established a local political subdivision ethics commission under Subsection (1) or (2); or
    - (ii) the commission if the political subdivision has not established a local political subdivision ethics commission or is a school district.
  - (b) A political subdivision that receives a complaint described in Subsection (3)(a) may:
    - (i) accept the complaint if the political subdivision has established a local political subdivision ethics commission in accordance with Subsection (1) or (2); or
    - (ii) forward the complaint to the commission:
      - (A) regardless of whether the political subdivision has established a local political subdivision ethics commission;
      - (B) if the political subdivision has not established a local political subdivision ethics commission; or
      - (C) if the complaint is regarding a member of a local school board as defined in Section 53E-1-102.

Amended by Chapter 378, 2023 General Session

## Part 2 Political Subdivisions Ethics Review Commission

### **63A-15-201 Commission established -- Membership.**

- (1) There is established a Political Subdivisions Ethics Review Commission.
  - (2) The commission is composed of seven individuals, each of whom is registered to vote in this state and appointed by the governor with the advice and consent of the Senate, as follows:
    - (a) one member who has served, but no longer serves, as a judge of a court of record in this state;
    - (b) one member who has served as a mayor or municipal council member no more recently than four years before the date of appointment;
    - (c) one member who has served as a member of a local board of education no more recently than four years before the date of appointment;
    - (d) two members who are lay persons; and
    - (e) two members, each of whom is one of the following:
      - (i) a municipal mayor no more recently than four years before the date of appointment;
      - (ii) a municipal council member no more recently than four years before the date of appointment;
      - (iii) a county mayor no more recently than four years before the date of appointment;
      - (iv) a county commissioner no more recently than four years before the date of appointment;
      - (v) a special service district administrative control board member no more recently than four years before the date of appointment;
      - (vi) a special district board of trustees member no more recently than four years before the date of appointment; or
      - (vii) a judge who has served, but no longer serves, as a judge of a court of record in this state.
- (3)



- (a) A member of the commission may not, during the member's term of office on the commission, act or serve as:
  - (i) a political subdivision officer;
  - (ii) a political subdivision employee;
  - (iii) an agency head as defined in Section 67-16-3;
  - (iv) a lobbyist as defined in Section 36-11-102; or
  - (v) a principal as defined in Section 36-11-102.
- (b) In addition to the seven members described in Subsection (2), the governor shall, with the advice and consent of the Senate, appoint one individual as an alternate member of the commission who:
  - (i) may be a lay person;
  - (ii) shall be registered to vote in the state; and
  - (iii) complies with the requirements described in Subsection (3)(a).
- (c) The alternate member described in Subsection (3)(b):
  - (i) shall serve as a member of the commission in the place of one of the seven members described in Subsection (2) if that member is temporarily unable or unavailable to participate in a commission function or is disqualified under Section 63A-15-303; and
  - (ii) may not cast a vote on the commission unless the alternate member is serving in the capacity described in Subsection (3)(c)(i).
- (4)
  - (a)
    - (i) Except as provided in Subsection (4)(a)(ii), each member of the commission shall serve a four-year term.
    - (ii) When appointing the initial members upon formation of the commission, a member described in Subsections (2)(b) through (d) shall be appointed to a two-year term so that approximately half of the commission is appointed every two years.
  - (b)
    - (i) When a vacancy occurs in the commission's membership for any reason, a replacement member shall be appointed for the unexpired term of the vacating member using the procedures and requirements of Subsection (2).
    - (ii) For the purposes of this section, an appointment for an unexpired term of a vacating member is not considered a full term.
  - (c) A member may not be appointed to serve for more than two full terms, whether those terms are two or four years.
  - (d) A member of the commission may resign from the commission by giving one month's written notice of the resignation to the governor.
  - (e) The governor shall remove a member from the commission if the member:
    - (i) is convicted of, or enters a plea of guilty to, a crime involving moral turpitude;
    - (ii) enters a plea of no contest or a plea in abeyance to a crime involving moral turpitude; or
    - (iii) fails to meet the qualifications of office as provided in this section.
  - (f)
    - (i) If a commission member is accused of wrongdoing in a complaint, or if a commission member has a conflict of interest in relation to a matter before the commission:
      - (A) the alternate member described in Subsection (3)(b) shall serve in the member's place for the purposes of reviewing the complaint; or
      - (B) if the alternate member has already taken the place of another commission member or is otherwise not available, the commission shall appoint another individual to temporarily serve in the member's place for the purposes of reviewing the complaint.

- (ii) An individual appointed by the commission under Subsection (4)(f)(i)(B):
  - (A) is not required to be confirmed by the Senate;
  - (B) may be a lay person;
  - (C) shall be registered to vote in the state; and
  - (D) shall comply with Subsection (3)(a).
- (5)
  - (a) Except as provided in Subsection (5)(b)(i), a member of the commission may not receive compensation or benefits for the member's service.
  - (b)
    - (i) A member may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
    - (ii) A member may decline to receive per diem and expenses for the member's service.
- (6) The commission members shall, by a majority vote, elect a commission chair from among the commission members.

Amended by Chapter 16, 2023 General Session

**63A-15-202 Meetings -- Staff -- Legal counsel -- Additional appropriations.**

- (1) The commission shall meet for the purpose of reviewing an ethics complaint when:
  - (a) except otherwise expressly provided in this chapter, called to meet at the discretion of the chair; or
  - (b) a majority of members agree to meet.
- (2) A majority of the commission is a quorum.
- (3)
  - (a) The commission shall prepare, on an annual basis, a summary data report that contains:
    - (i) a general description of the activities of the commission during the past year;
    - (ii) the number of ethics complaints filed with the commission;
    - (iii) the number of ethics complaints dismissed in accordance with Section 63A-15-602;
    - (iv) the number of ethics complaints reviewed by the commission in accordance with Section 63A-15-701;
    - (v) an executive summary of each complaint review in accordance with Section 63A-15-701; and
    - (vi) an accounting of the commission's budget and expenditures.
  - (b) The commission shall submit the summary data report to the governor on an annual basis.
  - (c) The summary data report shall be a public record.
- (4)
  - (a) The commission shall employ staff at a level that is reasonable to assist the commission in performing its duties as established in this chapter.
  - (b) Staff for the commission may not perform services for a political subdivision.
  - (c) A person employed as staff for the commission may be the same person employed as staff for the Independent Legislative Ethics Commission, if the staff ensures that proper protections are in place to preserve the confidentiality to both bodies and to avoid a conflict of interest.
- (5) A meeting held by the commission is subject to Title 52, Chapter 4, Open and Public Meetings Act, unless otherwise provided.
- (6) The commission:
  - (a) is an independent entity established within the department for budgetary and general administrative purposes only;

- (b) is not under the direction or control of the department, the executive director, or any other officer or employee of the department;
- (c) shall employ a director to provide administrative support to the commission and to assist the commission in fulfilling the commission's duties;
- (d) may employ additional staff, to work under the direction of the director;
- (e) shall contract with private legal counsel to provide legal services to the commission, as needed; and
- (f) may, in consultation with the Office of the Legislative Fiscal Analyst, request supplemental appropriations to pay the costs of legal fees and other staffing needs that exceed the commission's budget due to the number or complexity of the ethics complaints filed with or considered by the commission in a fiscal year.

Renumbered and Amended by Chapter 461, 2018 General Session

### **Part 3 General Powers and Procedures**

#### **63A-15-301 Authority to review complaint -- Grounds for complaint -- Limitations on filings.**

- (1) Subject to the requirements of this chapter and Section 10-3-1311 or 17-16a-11, the commission is authorized to review an ethics complaint against a political subdivision officer or employee if the complaint alleges:
  - (a) if the applicable political subdivision is a municipality, an ethics violation of Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act by:
    - (i) a city manager or non-elected chief executive; or
    - (ii) an elected officer, as defined in Section 10-3-1303;
  - (b) if the applicable political subdivision is a county, an ethics violation of Title 17, Chapter 16a, County Officers and Employees Disclosure Act by:
    - (i) an appointed officer, as defined in Section 17-16a-3;
    - (ii) an elected officer, as defined in Section 17-16a-3; or
    - (iii) an employee subject to Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or
  - (c) for a political subdivision officer or employee other than a municipal officer or employee described in Subsection (1)(a) or a county officer or employee described in Subsection (1)(b), an ethics violation of Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.
- (2) A complaint described in Subsection (1) shall be filed in accordance with the time limit provisions, if any, of the applicable part or chapter.
- (3)
  - (a) A complaint may not contain an allegation if that allegation and the general facts and circumstances supporting that allegation have been previously reviewed by a municipal ethics commission established under Section 10-3-1311, a county ethics commission established under Section 17-16a-11, or a local political subdivision ethics commission established under Section 63A-15-103, as applicable, or the commission unless:
    - (i) the allegation was previously reviewed and dismissed by the commission under Section 63A-15-602 or 63A-15-701;
    - (ii) the allegation is accompanied by material facts or circumstances supporting the allegation that were not raised or pled to the commission; and

- (iii) the allegation and the general facts and circumstances supporting that allegation have only been reviewed by the commission in accordance with Section 63A-15-701 on one previous occasion.
- (b) The commission may not review a complaint that is currently before:
  - (i) a municipal ethics commission established under Section 10-3-1311;
  - (ii) a county ethics commission established under Section 17-16a-11; or
  - (iii) a local political subdivision ethics commission established under Section 63A-15-103.
- (c) If an allegation in the complaint does not comply with the requirements of Subsection (3)(a) or (b), the allegation shall be summarily dismissed with prejudice by:
  - (i) the chair when reviewing the complaint under Section 63A-15-601; or
  - (ii) the commission, when reviewing the complaint under Section 63A-15-602 or 63A-15-701.
- (4) A complaint against a political subdivision officer or employee may not allege a violation by the political subdivision officer or employee for an act by an individual under the authority of the political subdivision officer or employee, unless the complaint evidences that the political subdivision officer or employee:
  - (a) encouraged, condoned, or ordered the act;
  - (b)
    - (i) before the individual engaged in the act, knew or should have known that the individual was likely to engage in the act; and
    - (ii) failed to take appropriate action to prevent the act;
  - (c)
    - (i) while the individual engaged in the act, knew or should have known that the individual was engaging in the act; and
    - (ii) failed to take appropriate action to stop the act; or
  - (d)
    - (i) after the individual engaged in the act, knew or should have known that the individual engaged in the act; and
    - (ii) failed to take appropriate action in response to the act.
- (5) A complaint against a political subdivision officer or employee may not allege a violation by the political subdivision officer or employee for an individual under the authority of the political subdivision officer or employee failing to act, unless the complaint evidences that the political subdivision officer or employee:
  - (a) encouraged, condoned, or ordered the failure to act;
  - (b)
    - (i) before the individual failed to act, knew or should have known that the individual was likely to fail to act; and
    - (ii) failed to take appropriate action to prevent the failure to act;
  - (c)
    - (i) while the individual was failing to act, knew or should have known that the individual was failing to act; and
    - (ii) failed to take appropriate action to prevent the failure to act; or
  - (d)
    - (i) after the individual failed to act, knew or should have known that the individual failed to act; and
    - (ii) failed to take appropriate action in response to the failure to act.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-302 General powers -- Jurisdiction.**

- (1) The commission has jurisdiction only over an individual who is a political subdivision officer or employee.
- (2) The commission shall dismiss an ethics complaint if:
  - (a) the respondent resigns or is terminated from the political subdivision; or
  - (b) except as provided in Subsection (3):
    - (i) the respondent is charged with a criminal violation of:
      - (A) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;
      - (B) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or
      - (C) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act; and
    - (ii) the facts and allegations presented in the ethics complaint assert the same or similar facts and allegations as those asserted in the criminal charges.
- (3) If an ethics complaint asserts an ethics violation in addition to a criminal violation described in Subsection (2)(b), the commission shall:
  - (a) dismiss an allegation described in Subsection (2)(b)(ii); and
  - (b) proceed with any remaining allegation in the complaint.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-303 Motion to disqualify commission member for conflict of interest.**

- (1) A complainant may file a motion to disqualify one or more members of the commission from participating in proceedings relating to the complaint if the individual files the motion within 20 days after the later of:
  - (a) the day on which the individual files the ethics complaint; or
  - (b) the day on which the individual knew or should have known of the grounds upon which the motion is based.
- (2) A respondent may file a motion to disqualify one or more members of the commission from participating in proceedings relating to the complaint if the respondent files the motion within 20 days after the later of:
  - (a) the day on which the respondent receives delivery of the complaint; or
  - (b) the day on which the respondent knew or should have known of the grounds upon which the motion is based.
- (3) A motion filed under this section shall include:
  - (a) a statement that the members to whom the motion relates have a conflict of interest that, under the circumstances, would lead a reasonable person to question the impartiality of the members;
  - (b) a detailed description of the grounds supporting the statement described in Subsection (3)(a); and
  - (c) a statement that the motion is filed in good faith, supported by an affidavit or declaration under penalty of Title 78B, Chapter 18a, Uniform Unsworn Declarations Act, stating that the motion and all accompanying statements and documents are true and correct to the best of the complainant's or respondent's knowledge.
- (4) A party may not file more than one motion to disqualify, unless the second or subsequent motion:
  - (a) is based on grounds of which the party was not aware, and could not have been aware, at the time of the earlier motion; and

- (b) is accompanied by a statement, included in the affidavit or declaration described in Subsection (3)(c), explaining how and when the party first became aware of the grounds described in Subsection (4)(a).
- (5) The commission shall dismiss a motion filed under this section, with prejudice, if the motion:
  - (a) is not timely filed; or
  - (b) does not comply with the requirements of this section.
- (6) A member of the commission may:
  - (a) on the member's own motion, disqualify the member from participating in proceedings relating to a complaint if the member believes that the member has a conflict of interest that, under the circumstances, would lead a reasonable person to question the impartiality of the member; or
  - (b) ask the commission to disqualify another member of the commission if the member believes that the member has a conflict of interest that, under the circumstances, would lead a reasonable person to question the impartiality of the member.
- (7)
  - (a) When a party files a motion under this section, or a when commission member makes a request under Subsection (6)(b), the commission member for whom disqualification is sought may make the initial determination regarding whether the commission member has a conflict of interest.
  - (b) If a commission member described in Subsection (7)(a) determines that the commission member has a conflict of interest, the commission member shall disqualify the commission member from participating in the matter.
  - (c) If a commission member described in Subsection (7)(a) determines that the commission member does not have a conflict of interest, or declines to make the determination, the remainder of the commission shall, by majority vote, determine whether the commission member has a conflict of interest.
  - (d) A vote of the commission, under Subsection (7)(c), constitutes a final decision on the issue of a conflict of interest.
- (8) In making a determination under Subsection (7)(c), the commission may:
  - (a) gather additional evidence;
  - (b) hear testimony; or
  - (c) request that the commission member who is the subject of the motion or request file an affidavit or declaration responding to questions posed by the commission.

Amended by Chapter 136, 2019 General Session

## **Part 4**

### **Hearing on Ethics Complaint**

#### **63A-15-401 Hearing on ethics complaint -- General procedures.**

- (1) In conducting a hearing on a complaint in accordance with Part 7, Commission Review of Ethics Violation, the commission shall comply with the following process in the order specified:
  - (a) introduction and instructions for procedure and process, at the discretion of the chair;
  - (b) complainant's opening argument, to be presented by a complainant or complainant's counsel;
  - (c) complainant's presentation of evidence and witnesses in support of allegations in the complaint;

- (d) consideration of motions to dismiss the complaint or motions for a finding of no cause, as applicable;
  - (e) respondent's opening argument, to be presented by the respondent or respondent's counsel;
  - (f) respondent's presentation of evidence and witnesses refuting allegations in the complaint;
  - (g) presentation of rebuttal evidence and witnesses by the complainant, at the discretion of the chair;
  - (h) presentation of rebuttal evidence and witnesses by the respondent, at the discretion of the chair;
  - (i) complainant's closing argument, to be presented by a complainant or complainant's counsel;
  - (j) respondent's closing argument, to be presented by the respondent or respondent's counsel;
  - (k) deliberations by the commission; and
  - (l) adoption of the commission's findings.
- (2) The commission may, in extraordinary circumstances, vary the order contained in Subsection (1) by majority vote and by providing notice to the parties.
- (3) The chair may schedule the examination of a witness or evidence subpoenaed at the request of the chair or the commission under Section 63A-15-403 at the chair's discretion.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-402 Chair as presiding officer.**

- (1) Except as expressly provided otherwise in this chapter, the chair of the commission is vested with the power to direct the commission during meetings authorized by this chapter.
- (2) Unless expressly prohibited from doing so under this chapter, the commission may overrule a decision of the chair by using the following procedure:
- (a) If a member objects to a decision of the chair, that member may appeal the decision by stating:
    - (i) "I appeal the decision of the chair."; and
    - (ii) the basis for the objection.
  - (b) A motion described in Subsection (2)(a) is nondebateable.
  - (c) The chair shall direct a roll call vote to determine if the commission supports the decision of the chair.
  - (d) A majority vote of the commission is necessary to overrule the decision of the chair.
- (3) The chair may set time limitations on any part of a meeting or hearing authorized by this chapter.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-403 Subpoena powers.**

- (1) Except for a preliminary review described in Section 63A-15-602, for a proceeding authorized by this chapter, the commission may issue a subpoena to:
- (a) require the attendance of a witness;
  - (b) direct the production of evidence; or
  - (c) require both the attendance of a witness and the production of evidence.
- (2) The commission shall issue a subpoena:
- (a) in accordance with Section 63A-15-405;
  - (b) at the direction of the commission chair, if the chair determines that the testimony or evidence is relevant to the review of a complaint under Part 7, Commission Review of Ethics Violation;
- or

- (c) upon a vote of a majority of the commission members.
- (3) If the commission issues a subpoena authorized under this section, the commission shall give a reasonable period of time for the person or entity to whom the subpoena is directed to petition a district court to quash or modify the subpoena before the time specified in the subpoena for compliance.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-404 Contempt of the commission.**

- (1)
  - (a) The following actions constitute contempt of the commission in relation to actions and proceedings under this chapter:
    - (i) disobedience to a direction of the commission chair;
    - (ii) failure, without legal justification, to answer a question during a hearing when directed to do so by:
      - (A) the commission chair, unless the direction is overridden by the commission in accordance with Section 63A-15-402; or
      - (B) a majority of the commission;
    - (iii) failure to comply with a subpoena or other order issued under authority of this chapter;
    - (iv) violation of privacy provisions established by Section 63A-15-502;
    - (v) violation of the communication provisions established by Section 63A-15-407;
    - (vi) violation of a request to comply with a provision of this chapter by a chair or a majority of the members of the commission; or
    - (vii) any other ground that is specified in statute or recognized by common law.
  - (b) Because the purpose of the Fifth Amendment privilege not to incriminate oneself is to prevent prosecution for criminal action, it is improper for a witness to invoke the Fifth Amendment privilege if the witness cannot be prosecuted for the crime to which the witness's testimony relates.
- (2)
  - (a) The following persons may authorize an enforcement action against a person in contempt of the commission under the provisions of this chapter:
    - (i) the commission chair, subject to the provisions of Section 63A-15-402; or
    - (ii) members of the commission, by means of a majority vote.
  - (b) In initiating and pursuing an action against an individual for contempt of the commission, the plaintiff shall comply with the procedures and requirements of Section 63A-15-405.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-405 Order to compel -- Enforcement.**

- (1)
  - (a) When the subject of a subpoena issued in accordance with Section 63A-15-403 disobeys or fails to comply with the subpoena, or if a person appears before the commission pursuant to a subpoena and refuses to testify to a matter upon which the person may be lawfully interrogated, the commission may:
    - (i) file a motion for an order to compel obedience to the subpoena with the district court within the jurisdiction of the applicable political subdivision;



- (ii) file, with the district court, a motion for an order to show cause why the penalties established in Title 78B, Chapter 6, Part 3, Contempt, should not be imposed upon the person named in the subpoena for contempt of the commission; or
  - (iii) pursue other remedies against persons in contempt of the commission.
- (b)
- (i) Upon receipt of a motion under this section, the court shall expedite the hearing and decision on the motion.
  - (ii) A court may:
    - (A) order the person named in the subpoena to comply with the subpoena; and
    - (B) impose any penalties authorized by Title 78B, Chapter 6, Part 3, Contempt, upon the person named in the subpoena for contempt of the commission.
- (2)
- (a) If a commission subpoena requires the production of accounts, books, papers, documents, or other tangible things, the person or entity to whom the subpoena is directed may petition a district court to quash or modify the subpoena at or before the time specified in the subpoena for compliance.
  - (b) The commission may respond to a motion to quash or modify the subpoena by pursuing any remedy authorized by Subsection (1).
  - (c) If the court finds that a commission subpoena requiring the production of accounts, books, papers, documents, or other tangible things is unreasonable or oppressive, the court may quash or modify the subpoena.
- (3) Nothing in this section prevents the commission from seeking an extraordinary writ to remedy contempt of the commission.
- (4) Any party aggrieved by a decision of a court under this section may appeal that action directly to the Utah Supreme Court.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-406 Testimony and examination of witnesses -- Oath -- Procedure -- Contempt.**

- (1)
- (a) The chair shall ensure that each witness listed in the complaint and response is subpoenaed for appearance at the hearing unless:
    - (i) the witness is unable to be properly identified or located; or
    - (ii) service is otherwise determined to be impracticable.
  - (b) The chair shall determine the scheduling and order of witnesses and presentation of evidence.
  - (c) The commission may, by majority vote:
    - (i) overrule the chair's decision not to subpoena a witness under Subsection (1)(a);
    - (ii) modify the chair's determination on the scheduling and order of witnesses under Subsection (1)(b);
    - (iii) decline to hear or call a witness that has been requested by the complainant or respondent;
    - (iv) decline to review or consider evidence submitted in relation to an ethics complaint; or
    - (v) request and subpoena witnesses or evidence according to the procedures of Section 63A-15-403.
- (2)
- (a) Each witness shall testify under oath.
  - (b) The chair or the chair's designee shall administer the oath to each witness.
- (3) After the oath has been administered to the witness, the chair shall direct testimony as follows:

- (a) allow the party that has called the witness, or that party's counsel, to question the witness;
  - (b) allow the opposing party, or that party's counsel, to cross-examine the witness;
  - (c) allow additional questioning by a party or a party's counsel as appropriate;
  - (d) give commission members the opportunity to question the witness; and
  - (e) as appropriate, allow further examination of the witness by the commission, or the parties or their counsel.
- (4)
- (a) If the witness, a party, or a party's counsel objects to a question, the chair shall:
    - (i) direct the witness to answer; or
    - (ii) rule that the witness is not required to answer the question.
  - (b) If the witness declines to answer a question after the chair or a majority of the commission determines that the witness is required to answer the question, the witness may be held in contempt as provided in Section 63A-15-404.
- (5)
- (a) The chair or a majority of the members of the commission may direct a witness to furnish any relevant evidence for consideration if the witness has brought the material voluntarily or has been required to bring it by subpoena.
  - (b) If the witness declines to provide evidence in response to a subpoena, the witness may be held in contempt as provided in Section 63A-15-404.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-407 Communications of commission members.**

- (1) As used in this section, "third party" means a person who is not a member of the commission or staff to the commission.
- (2) While a complaint is under review by the commission, a member of the commission may not initiate or consider any communications concerning the complaint with a third party unless:
  - (a) the communication is expressly permitted under the procedures established by this chapter; or
  - (b) the communication is made by the third party, in writing, simultaneously to:
    - (i) all members of the commission; and
    - (ii) a staff member of the commission.
- (3) While the commission is reviewing a complaint under this chapter, a commission member may communicate outside of a meeting, hearing, or deliberation with another member of, or staff to, the commission, only if the member's communication does not materially compromise the member's responsibility to independently review and make decisions in relation to the complaint.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-408 Attorney fees and costs.**

- (1) A person filing a complaint under this chapter:
  - (a) may, but is not required to, retain legal representation during the complaint review process; and
  - (b) is responsible for payment of complainant's attorney fees and costs incurred.
- (2)
  - (a) A respondent against whom a complaint is filed under this chapter:
    - (i) may, but is not required to, retain legal representation during the complaint review process;

- (ii) except as provided in Subsection (2)(a)(iii), is responsible for payment of the respondent's attorney fees and costs incurred; and
- (iii) may be entitled to the provision of legal defense by the political subdivision in accordance with Section 63G-7-902.
- (b) For purposes of Subsection (2)(a)(iii), a complaint filed against a respondent in accordance with this chapter shall constitute an action against a governmental employee in accordance with Section 63G-7-902.
- (3)
  - (a) An attorney participating in a hearing before the commission shall comply with:
    - (i) the Rules of Professional Conduct established by the Utah Supreme Court;
    - (ii) the procedures and requirements of this chapter; and
    - (iii) the directions of the chair and commission.
  - (b) A violation of Subsection (3)(a) may constitute:
    - (i) contempt of the commission under Section 63A-15-404; or
    - (ii) a violation of the Rules of Professional Conduct subject to enforcement by the Utah State Bar.

Renumbered and Amended by Chapter 461, 2018 General Session

## **Part 5**

### **Complaint of Ethics Violation**

#### **63A-15-501 Ethics complaints -- Who may file -- Form.**

- (1)
  - (a) Notwithstanding any other provision, the following may file a complaint, subject to the requirements of Subsections (1)(b) and (c) and Section 63A-15-301, against a political subdivision officer or employee:
    - (i) two or more registered voters who reside within the boundaries of a political subdivision;
    - (ii) two or more registered voters who pay a fee or tax to a political subdivision; or
    - (iii) one or more registered voters who reside within the boundaries of a political subdivision and one or more registered voters who pay a fee or tax to the political subdivision.
  - (b) A person described in Subsection (1)(a) may not file a complaint unless at least one person described in Subsection (1)(a)(i), (ii), or (iii) has actual knowledge of the facts and circumstances supporting the alleged ethics violation.
  - (c) A complainant may file a complaint only against an individual who, on the date that the complaint is filed, is serving as a political subdivision officer or is a political subdivision employee.
- (2)
  - (a) The commission shall post, on the state's website, a conspicuous and clearly identified link to the name and address of an individual authorized to accept a complaint on behalf of the commission.
  - (b) A complainant shall file a complaint with the individual described in Subsection (2)(a).
  - (c) An individual may not file a complaint during the 60 calendar days immediately preceding:
    - (i) a regular primary election, if the accused political subdivision officer is a candidate in the primary election; or

- (ii) a regular general election in which an accused political subdivision officer is a candidate, unless the accused political subdivision officer is unopposed in the election.
- (3) A complainant shall ensure that each complaint filed under this section is in writing and contains the following information:
  - (a) the name and position of the political subdivision officer or employee alleged to be in violation;
  - (b) the name, address, and telephone number of each individual who is filing the complaint;
  - (c) a description of each alleged ethics violation, as applicable of:
    - (i) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;
    - (ii) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or
    - (iii) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;
  - (d) include for each alleged ethics violation:
    - (i) a reference to the section of the code alleged to have been violated;
    - (ii) the name of the complainant who has actual knowledge of the facts and circumstances supporting each allegation; and
    - (iii) with reasonable specificity, the facts and circumstances supporting each allegation, which shall be provided by:
      - (A) copies of official records or documentary evidence; or
      - (B) one or more affidavits that include the information required in Subsection (4);
  - (e) a list of the witnesses that a complainant wishes to have called, including for each witness:
    - (i) the name, address, and, if available, one or more telephone numbers of the witness;
    - (ii) a brief summary of the testimony to be provided by the witness; and
    - (iii) a specific description of any documents or evidence a complainant desires the witness to produce;
  - (f) a statement that each complainant:
    - (i) has reviewed the allegations contained in the complaint and the sworn statements and documents attached to the complaint;
    - (ii) believes that the complaint is submitted in good faith and not for any improper purpose such as for the purpose of harassing the respondent, causing unwarranted harm to the respondent's reputation, or causing unnecessary expenditure of public funds; and
    - (iii) believes the allegations contained in the complaint to be true and accurate; and
  - (g) the signature of each complainant.
- (4) An affidavit described in Subsection (3)(d)(iii)(B) shall include:
  - (a) the name, address, and telephone number of the signer;
  - (b) a statement that the signer has actual knowledge of the facts and circumstances alleged in the affidavit;
  - (c) the facts and circumstances testified by the signer;
  - (d) a statement that the affidavit is believed to be true and correct and that false statements are subject to penalties of perjury; and
  - (e) the signature of the signer.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-502 Privacy of ethics complaint -- Contempt -- Enforcement of finding of contempt -- Dismissal.**

- (1)
  - (a) Except as otherwise provided in this chapter, a person, including a complainant, the respondent, a commission member, or staff to the commission, may not disclose the

existence of a complaint, a response, nor any information concerning any alleged ethics violation that is the subject of a complaint.

- (b) The restrictions in Subsection (1)(a) do not apply to:
  - (i) the respondent's voluntary disclosure of a finding by the commission that no allegations in a complaint were proved after that finding is issued by the commission under the procedures and requirements of Section 63A-15-602;
  - (ii) this disclosure of facts or allegations about potential criminal violations to a law enforcement authority;
  - (iii) a disclosure by a respondent that is made solely for the purpose of, and only to the extent necessary for, retaining counsel, conducting an interview, seeking evidence, or taking other action to prepare to defend against a complaint;
  - (iv) a communication between a commission member and the commission's attorney or a member of the commission's staff; or
  - (v) a disclosure to a person that is determined necessary, by a majority vote of the commission, to conduct the duties of the commission.
- (2) When a person makes a disclosure under Subsection (1)(b)(iii) or (v), the person making the disclosure shall inform the person to whom the disclosure is made of the nondisclosure requirements described in this section.
- (3) After the commission issues an order under Subsection 63A-15-704(2), the commission may disclose the portion of the complaint, a response, and other information relating to an alleged ethics violation that the commission determines is proved.
- (4) A person who violates the provisions of Subsection (1)(a) is in contempt of the commission and proceedings may be initiated to enforce the finding of contempt using the procedures provided in Sections 63A-15-404 and 63A-15-405.
- (5) If, before the commission issues an order in relation to an ethics complaint under Section 63A-15-704, the existence of the ethics complaint is publicly disclosed by a person other than the respondent, an agent of the respondent, or a person who learns of the complaint under Subsection (1)(b)(iii) or (v), the commission shall summarily dismiss the complaint without prejudice.

Renumbered and Amended by Chapter 461, 2018 General Session

## **Part 6 Review of Complaint**

### **63A-15-601 Review of ethics complaint for compliance with form requirements -- Independent requirements for complaint -- Notice.**

- (1) Within 10 business days after receipt of a complaint, the staff of the commission, in consultation with the chair of the commission, shall examine the complaint to determine if it is in compliance with Sections 63A-15-301 and 63A-15-501.
- (2)
  - (a) If the chair determines that the complaint does not comply with Sections 63A-15-301 and 63A-15-501, the chair shall:
    - (i) return the complaint to the first complainant named on the complaint with:
      - (A) a statement detailing the reason for the non-compliance; and
      - (B) a copy of the applicable provisions in this chapter; and

- (ii) notify the applicable political subdivision governing body that:
  - (A) a complaint was filed against an unidentified political subdivision officer or employee but was returned for non-compliance with this chapter; and
  - (B) the fact that a complaint was filed and returned shall be kept confidential until the commission submits its annual summary data report as required by Section 63A-15-202.
- (b) If a complaint is returned for non-compliance with the requirements of this chapter, a complainant may file another complaint if the new complaint independently meets the requirements of Sections 63A-15-301 and 63A-15-501, including any requirements for timely filing.
- (3) If the chair determines that the complaint complies with the requirements of this section, the chair shall:
  - (a) accept the complaint;
  - (b) notify each member of the commission that the complaint has been filed and accepted;
  - (c) notify the applicable political subdivision that:
    - (i) a complaint has been filed against an unidentified political subdivision officer or employee;
    - (ii) the identity of the political subdivision officer or employee and the allegations raised in the complaint are confidential pending the commission's preliminary review of the complaint; and
    - (iii) the fact that a complaint was filed shall be kept confidential until the commission publicly discloses the existence of the complaint via:
      - (A) notice of the commission's review of a complaint in accordance with Section 63A-15-701; or
      - (B) submission of the commission's annual summary data report as required in Section 63A-15-202; and
  - (d) promptly forward the complaint to the political subdivision officer or employee who is the subject of the ethics complaint via personal delivery or a delivery method that provides verification of receipt, together with a copy of this chapter and notice of the officer's or employee's deadline for filing a response to the complaint if the complaint is not dismissed under Section 63A-15-602.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-602 Preliminary review of complaint -- Standard of proof -- Notice.**

- (1)
  - (a) By no later than 10 calendar days after the day on which a complaint is accepted under Section 63A-15-601, the commission chair shall:
    - (i) schedule a commission meeting on a date no later than 60 calendar days after the date on which the commission accepts the complaint;
    - (ii) place the complaint on the agenda for consideration at the meeting;
    - (iii) provide a copy of the complaint to the members; and
    - (iv) provide notice of the date, time, and location of the meeting:
      - (A) to the respondent;
      - (B) the first complainant named in the complaint;
      - (C) each commission member; and
      - (D) in accordance with Section 52-4-202.
  - (b) The meeting described in Subsection (1)(a)(ii) is closed to the public in accordance with Section 52-4-204.
- (2)

- (a) At the meeting described in Subsection (1)(a)(i):
    - (i) the commission members shall review each allegation in the complaint;
    - (ii) the commission may not receive testimony, hear a motion from a party, or admit evidence; and
    - (iii) the chair shall conduct deliberations.
  - (b) The commission may, if necessary:
    - (i) request a formal response or affidavit from a respondent; and
    - (ii) review the response or affidavit at the meeting.
  - (c) Upon a motion made by a commission member, the commission may exclude commission staff from all or a portion of the deliberations by a majority vote.
- (3)
- (a) During deliberations, each commission member shall, for each allegation, determine:
    - (i) whether the facts alleged, if true, would be an ethics violation;
    - (ii) whether the complaint includes an affidavit from a person with firsthand knowledge of alleged facts described in Subsection (3)(a)(i); and
    - (iii) whether the complaint is frivolous or solely for a political purpose.
  - (b) A commission member shall vote to forward an allegation in a complaint for a final commission review in accordance with Part 7, Commission Review of Ethics Violation, if the commission member determines:
    - (i) an allegation, if true, would be an ethics violation;
    - (ii) the complaint contains an affidavit with firsthand knowledge of the allegation under Subsection (3)(a)(ii); and
    - (iii) the allegation is not frivolous or solely for a political purpose.
- (4)
- (a) A verbal roll call vote shall be taken on each allegation and each member's vote shall be recorded.
  - (b) The commission may not review an allegation for a final determination under Part 7, Commission Review of Ethics Violation, unless six of the seven members of the commission vote to review the allegation.
- (5)
- (a) An allegation that is not forwarded for a final determination is dismissed.
  - (b) Before the commission issues an order in accordance with this section, the commission may, upon a majority vote, reconsider and hold a new vote on an allegation.
  - (c) A motion to reconsider a vote may only be made by a member of the commission who voted that the allegation should not be forwarded for a final determination.
- (6)
- (a) If each allegation stated in a complaint is dismissed in accordance with this section, the commission shall:
    - (i) issue and enter into the record an order that the complaint is dismissed because no allegations, in accordance with this section, were forwarded for a final determination;
    - (ii) classify all recordings, testimony, evidence, orders, findings, and other records directly relating to the meetings authorized by this part as private records under Section 63G-2-302;
    - (iii) provide notice of the determination, in a manner determined by the chair, to:
      - (A) the respondent;
      - (B) the first complainant named on the complaint; and
      - (C) subject to Subsection (6)(b), the appropriate political subdivision; and
    - (iv) provide notice to each person or entity named in Subsections (6)(a)(iii)(A) through (C) that, under provisions of Section 63A-15-502 and other provisions of this chapter, a person who

- discloses the findings of the commission in violation of any provision of this chapter is in contempt of the commission and is subject to penalties for contempt.
- (b) The notification to the appropriate political subdivision shall notify the political subdivision that:
- (i) a complaint against an unidentified political subdivision officer or employee has been dismissed; and
  - (ii) the fact that a complaint was filed shall be kept confidential until the commission publicly discloses the existence of the complaint via submission of the commission's annual summary data report as required in Section 63A-15-202.
- (7) If one or more of the allegations stated in a complaint are not dismissed in accordance with this section, the commission shall:
- (a) issue and enter into the record:
    - (i) an order for each allegation that is dismissed, if any, because the allegation was not forwarded for a final determination; and
    - (ii) an order for further review under Part 7, Commission Review of Ethics Violation, of each allegation that is not dismissed;
  - (b) classify all recordings, orders, findings, and other records or documents directly relating to a meeting authorized by this section as private records under Section 63G-2-302;
  - (c) if an allegation was dismissed, provide notice of the determination for each allegation dismissed in a manner determined by the chair, to:
    - (i) the respondent;
    - (ii) the first complainant named on the complaint; and
    - (iii) subject to Subsection (8), the appropriate political subdivision; and
  - (d) provide notice to each person or entity named in Subsections (7)(c)(i) through (iii) that:
    - (i) under provisions of Section 63A-15-502 and other provisions of this chapter, a person who discloses the findings of the commission under this section in violation of any provision of this chapter is in contempt of the commission and is subject to penalties for contempt; and
    - (ii) the commission shall review the remaining allegations in the complaint at a meeting described in Section 63A-15-603 and in accordance with Part 7, Commission Review of Ethics Violation.
- (8) The notification to the appropriate political subdivision shall notify the political subdivision that:
- (a) an unspecified allegation in a complaint against an unidentified political subdivision officer or employee has been dismissed; and
  - (b) the fact that a complaint was filed shall be kept confidential until the commission publicly discloses the existence of the complaint in accordance with the provisions of this chapter.
- (9) For a complaint described in Subsection (7), the commission members shall ensure that, within five business days after the day of the meeting described in Subsection (1)(a)(ii), the complaint is redacted to remove references to an allegation that is dismissed under this section.
- (10) The chair shall ensure that a record of the meeting held under this section is kept in accordance with Section 63A-15-702.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-603 Meeting of the commission to review a complaint -- Procedures.**

By no later than 10 calendar days after the day on which a complaint is accepted under Section 63A-15-602 for further review, the commission chair shall:

- (1) schedule a commission meeting on a date no later than 60 calendar days after the date on which the commission votes to forward a complaint for final determination in accordance with Section 63A-15-602;



- (2) place the complaint on the agenda for consideration at the meeting described in Subsection (1);
- (3) provide notice of the date, time, and location of the meeting:
  - (a) to:
    - (i) the members of the commission;
    - (ii) the first complainant named in the complaint; and
    - (iii) the respondent; and
  - (b) in accordance with Section 52-4-202; and
- (4) provide a copy of the complaint or redacted complaint, as required in Section 63A-15-602, to each member of the commission.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-604 Response to ethics complaint -- Filing -- Form.**

- (1) The political subdivision officer or employee who is the subject of the complaint may file a response to the complaint no later than 30 days after the day on which the officer or employee receives delivery of an order issued by the commission under Subsection 63A-15-602(7).
- (2) The respondent shall file the response with the commission and ensure that the response is in writing and contains the following information:
  - (a) the name, address, and telephone number of the respondent;
  - (b) for each alleged ethics violation in the complaint:
    - (i) each affirmative defense asserted in response to the allegation, including a general description of each affirmative defense and the facts and circumstances supporting the defense to be provided by one or more affidavits, each of which shall comply with Subsection (4);
    - (ii) the facts and circumstances refuting the allegation, which shall be provided by:
      - (A) copies of official records or documentary evidence; or
      - (B) one or more affidavits, each of which shall comply with Subsection (4);
  - (c) a list of the witnesses that the respondent wishes to have called, including for each witness:
    - (i) the name, address, and, if available, telephone number of the witness;
    - (ii) a brief summary of the testimony to be provided by the witness; and
    - (iii) a specific description of any documents or evidence the respondent desires the witness to produce;
  - (d) a statement that the respondent:
    - (i) has reviewed the allegations contained in the complaint and the sworn statements and documents attached to the response; and
    - (ii) believes the contents of the response to be true and accurate; and
  - (e) the signature of the respondent.
- (3) Promptly after receiving the response, the commission shall provide copies of the response to:
  - (a) each member of the commission; and
  - (b) the first named complainant on the complaint.
- (4) An affidavit described in Subsection (2)(b)(i) or (2)(b)(ii)(B) shall include the following information:
  - (a) the name, address, and telephone number of the signer;
  - (b) a statement that the signer has actual knowledge of the facts and circumstances alleged in the affidavit;
  - (c) the facts and circumstances testified to by the signer;
  - (d) a statement that the affidavit is believed to be true and correct and that false statements are subject to penalties of perjury; and

- (e) the signature of the signer.

Renumbered and Amended by Chapter 461, 2018 General Session

## **Part 7**

### **Commission Review of Ethics Violation**

#### **63A-15-701 Commission review of ethics violation.**

- (1) The scope of a review by the commission is limited to an alleged ethics violation stated in a complaint that has not been previously dismissed under Section 63A-15-602.
- (2)
  - (a) Before holding the meeting for review of the complaint, the commission chair may schedule a separate meeting of the commission for the purposes of:
    - (i) hearing motions or arguments from the parties, including hearing motions or arguments relating to dismissal of a complaint, admission of evidence, or procedures;
    - (ii) holding a vote of the commission, with or without the attendance of the parties, on procedural or commission business matters relating to a complaint; or
    - (iii) reviewing a complaint, with or without the attendance of the parties, to determine if the complaint should be dismissed in whole or in part, by means of a majority vote of the commission, because the complaint pleads facts or circumstances against a political subdivision officer or employee that have already been reviewed by, as provided in Section 63A-15-301, the commission, a municipal ethics commission established in accordance with Section 10-3-1311, a county ethics commission established in accordance with Section 17-16a-11, or a local political subdivision ethics commission established in accordance with Section 63A-15-103.
  - (b) Notwithstanding Section 63A-15-603, the commission may, by a majority vote, change the date of the meeting for review of the complaint in order to accommodate:
    - (i) a meeting authorized under Subsection (2)(a); or
    - (ii) necessary scheduling requirements.
- (3)
  - (a) The commission shall comply with the Utah Rules of Evidence except where the commission determines, by majority vote, that a rule is not compatible with the requirements of this chapter.
  - (b) The chair shall make rulings on admissibility of evidence consistent with the provisions of Section 63A-15-402.
- (4)
  - (a) A meeting or hearing authorized in this part is open to the public except as provided in Section 52-4-204.
  - (b) The following individuals may be present during the presentation of testimony and evidence to the commission:
    - (i) the complainant;
    - (ii) the complainant's counsel, if applicable;
    - (iii) the respondent;
    - (iv) the respondent's counsel, if applicable;
    - (v) members of the commission;
    - (vi) staff to the commission;

- (vii) a witness, while testifying before the commission; and
- (viii) necessary security personnel.
- (c) The commission may, in accordance with Section 52-4-204, close a meeting to:
  - (i) seek or obtain legal advice on legal, evidentiary, or procedural matters; or
  - (ii) conduct deliberations to reach a decision on the complaint.
- (5) If a majority of the commission determines that a continuance is necessary to obtain further evidence and testimony, to accommodate administrative needs, or to accommodate the attendance of commission members, witnesses, or a party, the commission shall:
  - (a) adjourn and continue the meeting to a future date and time after notice to the parties; and
  - (b) establish that future date and time by majority vote.
- (6) A record, as defined in Section 63G-2-103, created by the commission under this part, reviewed by the commission under this part, or received by the commission under this part, is a public record, as defined in Section 63G-2-103.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-702 Record -- Recording of meetings.**

- (1)
  - (a) Except as provided in Subsection (1)(b), an individual may not use a camera or other recording device in a meeting authorized by this part.
  - (b)
    - (i) The commission shall keep an audio or video recording of all portions of each meeting authorized by this part.
    - (ii) The commission may, by a majority vote of the commission, permit a camera or other recording device in the meeting in which the commission releases the commission's recommendation under this part.
- (2) In addition to the recording required in Subsection (1), the chair shall ensure that a record of the meeting or hearing is made, which shall include:
  - (a) official minutes taken during the meeting or hearing, if any;
  - (b) copies of all documents or other items admitted into evidence by the commission;
  - (c) copies of a document or written order or ruling issued by the chair or the commission; and
  - (d) any other information that a majority of the commission or the chair directs.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-703 Commission deliberations -- Standard of proof.**

- (1) After each party has presented a closing argument, the commission shall, at the direction of the chair, begin its deliberations:
  - (a) immediately after conclusion of the closing arguments; or
  - (b) at a future meeting of the commission, on a date and time determined by a majority of the members of the commission.
- (2)
  - (a) The chair of the commission shall conduct the deliberations.
  - (b) Upon a motion made by a commission member, the commission may:
    - (i) exclude commission staff from all or a portion of the deliberations by a majority vote of the commission; or
    - (ii) close the meeting in accordance with Section 52-4-204.
- (3)

- (a) During deliberations, for each allegation reviewed by the commission, each member shall determine and cast a vote stating:
  - (i) whether the allegation is:
    - (A) proven by clear and convincing evidence; or
    - (B) not proven; and
  - (ii) for each allegation proven, whether the commission would recommend to the appropriate political subdivision governing body to take one or more of the following actions:
    - (A) censure;
    - (B) in the case of a political subdivision employee, termination;
    - (C) in the case of a political subdivision officer, removal from office; or
    - (D) any other action or reprimand that the commission determines is appropriate.
- (b)
  - (i) A verbal roll call vote shall be taken on each allegation, and each recommended action described in Subsection (3)(a)(ii) on each allegation.
  - (ii) Each member's vote shall be recorded.
- (4)
  - (a) An allegation is not considered to be proven unless six of the seven members of the commission vote that the allegation is proven.
  - (b) The seven members of the commission described in Subsection (4)(a) refers to the members that actually participate in deciding whether an allegation is proven, including an alternate member described in Subsection 63A-15-201(4)(f)(i)(A) or a temporary member described in Subsection 63A-15-201(4)(f)(i)(B).
  - (c) An allegation that is not considered to be proven is dismissed.
  - (d)
    - (i) Before the commission issues its recommendation in accordance with Section 63A-15-704, the commission may, upon a majority vote, reconsider and hold a new vote on an allegation.
    - (ii) A motion to reconsider a vote may only be made by a member of the commission who voted that the allegation was not proved.
- (5) The commission may not find that an allegation is proven if the allegation is based on an act by an individual under the authority of the political subdivision officer or employee, unless the commission finds, by clear and convincing evidence, that the political subdivision officer or employee:
  - (a) encouraged, condoned, or ordered the act;
  - (b)
    - (i) before the individual engaged in the act, knew or should have known that the individual was likely to engage in the act; and
    - (ii) failed to take appropriate action to prevent the act;
  - (c)
    - (i) while the individual engaged in the act, knew or should have known that the individual was engaging in the act; and
    - (ii) failed to take appropriate action to stop the act; or
  - (d)
    - (i) after the individual engaged in the act, knew or should have known that the individual engaged in the act; and
    - (ii) failed to take appropriate action in response to the act.
- (6) The commission may not find that an allegation is proven if the allegation is based on the failure of an individual under the authority of the political subdivision officer or employee to act, unless

the commission finds, by clear and convincing evidence, that the political subdivision officer or employee:

- (a) encouraged, condoned, or ordered the failure to act;
  - (b)
    - (i) before the individual failed to act, knew or should have known that the individual was likely to fail to act; and
    - (ii) failed to take appropriate action to prevent the failure to act;
  - (c)
    - (i) while the individual was failing to act, knew or should have known that the individual was failing to act; and
    - (ii) failed to take appropriate action to prevent the failure to act; or
  - (d)
    - (i) after the individual failed to act, knew or should have known that the individual failed to act; and
    - (ii) failed to take appropriate action in response to the failure to act.
- (7) At the conclusion of deliberations, the commission shall prepare the commission's recommendations as provided in Sections 63A-15-704 and 63A-15-705.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-704 Recommendations of commission.**

- (1)
  - (a) If the commission determines that no allegations in the complaint were proved, the commission shall:
    - (i) issue and enter into the record an order that the complaint is dismissed because no allegations in the complaint were found to have been proved;
    - (ii) provide notice of the determination at a public meeting; and
    - (iii) provide written notice of the determination to:
      - (A) the respondent;
      - (B) the first complainant named on the complaint; and
      - (C) the appropriate political subdivision.
  - (2) If the commission determines that one or more of the allegations in the complaint were proved, the commission shall:
    - (a) if one or more allegations were not found to have been proven, enter into the record an order dismissing those unproven allegations; and
    - (b) prepare a written recommendation to the applicable political subdivision governing body that:
      - (i) lists the name of each complainant;
      - (ii) lists the name of the respondent;
      - (iii) states the date of the recommendation;
      - (iv) for each allegation that was found to be proven:
        - (A) provides a reference to the statute or criminal provision allegedly violated;
        - (B) states the number and names of commission members voting that the allegation was proved and the number and names of commission members voting that the allegation was not proved;
        - (C) at the option of those members voting that the allegation was proved, includes a statement by one or all of those members stating the reasons for voting that the allegation was proved; and

- (D) at the option of those members voting that the allegation was not proved, includes a statement by one or all of those members stating the reasons for voting that the allegation was not proved;
  - (v) contains any general statement that is adopted for inclusion in the recommendation by a majority of the members of the commission;
  - (vi) contains a statement referring the allegations found to have been proved to the appropriate political subdivision governing body for review and, if necessary, further action;
  - (vii) contains a statement referring to each allegation proven the commission's recommendation under Subsection 63A-15-703(3)(a)(ii);
  - (viii) states the name of each member of the commission; and
  - (ix) is signed by each commission member.
- (3) The commission shall provide notice of the determination:
- (a) at a public meeting; and
  - (b) in writing to:
    - (i) the respondent;
    - (ii) the first complainant named on the complaint; and
    - (iii) in accordance with Subsection (4), the appropriate political subdivision.
- (4) The commission shall ensure that, within 10 business days of the date of public issuance of the determination in accordance with Subsection (3), the following documents are provided to the political subdivision governing body:
- (a) a cover letter referring the proven allegations contained in the complaint to the political subdivision governing body for review;
  - (b) a copy of the complaint;
  - (c) a copy of the response; and
  - (d) a copy of the commission's recommendation.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-705 Criminal allegation -- Recommendation to county or district attorney or attorney general.**

- (1) If the commission finds that a political subdivision officer or employee allegedly violated a criminal provision, the commission shall, in addition to sending a recommendation to a political subdivision governing body in accordance with Section 63A-15-704, send a written recommendation for further investigation to one or more of the following:
- (a) the county or district attorney of the applicable jurisdiction; or
  - (b) the attorney general.
- (2) The written recommendation described in Subsection (1) shall:
- (a) list the name of each complainant;
  - (b) list the name of the respondent;
  - (c) state the date of the recommendation;
  - (d) for each allegation of a criminal violation, provide a reference to the criminal provision allegedly violated;
  - (e) include a general statement that is adopted by a majority of the members of the commission; and
  - (f) state the name of the political subdivision governing body that the commission sent a recommendation to in accordance with Section 63A-15-704.
- (3) If the commission sends a recommendation in accordance with this section, the commission shall enter into the record:

- (a) a copy of the recommendation; and
  - (b) the name of each person described in Subsection (1) to whom the commission sent the recommendation.
- (4) A recommendation prepared and delivered in accordance with this section is a public record.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-706 Action by political subdivision governing body.**

A political subdivision governing body that receives a recommendation in accordance with Section 63A-15-704 shall:

- (1) review the recommendation; and
- (2) take further action in accordance with a political subdivision's governing ordinance, bylaws, or other applicable governing rule.

Renumbered and Amended by Chapter 461, 2018 General Session

## **Chapter 16 Utah Technology Governance Act**

### **Part 1 General Provisions**

**63A-16-101 Title.**

This chapter is known as the "Utah Technology Governance Act."

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-16-102 Definitions.**

As used in this chapter:

- (1) "Chief information officer" means the chief information officer appointed under Section 63A-16-201.
- (2) "Data center" means a centralized repository for the storage, management, and dissemination of data.
- (3) "Division" means the Division of Technology Services.
- (4) "Enterprise architecture" means:
  - (a) information technology assets and functions that can be applied across state government, including:
    - (i) mainframes, servers, desktop devices, peripherals, and other computing devices;
    - (ii) networks;
    - (iii) enterprise-wide applications;
    - (iv) maintenance and help desk functions for common hardware and applications;
    - (v) standards for other computing devices, operating systems, common applications, and software; and

- (vi) master contracts that are available for use by agencies for various systems, including operating systems, databases, enterprise resource planning and customer relationship management software, application development services, and enterprise integration; and
- (b) support for information technology that can be applied across state government, including:
  - (i) technical support;
  - (ii) master software licenses; and
  - (iii) hardware and software standards.
- (5)
  - (a) "Executive branch agency" means an agency or administrative subunit of state government.
  - (b) "Executive branch agency" does not include:
    - (i) the legislative branch;
    - (ii) the judicial branch;
    - (iii) the State Board of Education;
    - (iv) the Utah Board of Higher Education;
    - (v) institutions of higher education;
    - (vi) independent entities as defined in Section 63E-1-102; or
    - (vii) the following elective constitutional offices of the executive department:
      - (A) the state auditor;
      - (B) the state treasurer; and
      - (C) the attorney general.
- (6) "Executive branch strategic plan" means the executive branch strategic plan created under Section 63A-16-202.
- (7) "Individual with a disability" means an individual with a condition that meets the definition of "disability" in 42 U.S.C. Sec. 12102.
- (8) "Information technology" means all computerized and auxiliary automated information handling, including:
  - (a) systems design and analysis;
  - (b) acquisition, storage, and conversion of data;
  - (c) computer programming;
  - (d) information storage and retrieval;
  - (e) voice, video, and data communications;
  - (f) requisite systems controls;
  - (g) simulation; and
  - (h) all related interactions between people and machines.
- (9) "State information architecture" means a logically consistent set of principles, policies, and standards that guide the engineering of state government's information technology and infrastructure in a way that ensures alignment with state government's business and service needs.

Amended by Chapter 169, 2022 General Session

**63A-16-103 Division of Technology Services.**

- (1) There is created within the department the Division of Technology Services.
- (2) The division has authority to operate as an internal service fund agency as provided in Section 63J-1-410.

Renumbered and Amended by Chapter 344, 2021 General Session



**63A-16-104 Duties of division.**

The division shall:

- (1) lead state executive branch agency efforts to establish and reengineer the state's information technology architecture with the goal of coordinating central and individual agency information technology in a manner that:
  - (a) ensures compliance with the executive branch agency strategic plan; and
  - (b) ensures that cost-effective, efficient information and communication systems and resources are being used by agencies to:
    - (i) reduce data, hardware, and software redundancy;
    - (ii) improve system interoperability and data accessibility between agencies; and
    - (iii) meet the agency's and user's business and service needs;
- (2) coordinate an executive branch strategic plan for all agencies;
- (3) develop and implement processes to replicate information technology best practices and standards throughout the executive branch;
- (4) once every three years:
  - (a) conduct an information technology security assessment via an independent third party:
    - (i) to evaluate the adequacy of the division's and the executive branch agencies' data and information technology system security standards; and
    - (ii) that will be completed over a period that does not exceed two years; and
  - (b) communicate the results of the assessment described in Subsection (4)(a) to the appropriate executive branch agencies and to the president of the Senate and the speaker of the House of Representatives;
- (5) subject to Subsection 63G-6a-109.5(9):
  - (a) advise executive branch agencies on project and contract management principles as they relate to information technology projects within the executive branch; and
  - (b) approve the acquisition of technology services and products by executive branch agencies as required under Section 63G-6a-109.5;
- (6) work toward building stronger partnering relationships with providers;
- (7) develop service level agreements with executive branch departments and agencies to ensure quality products and services are delivered on schedule and within budget;
- (8) develop standards for application development including a standard methodology and cost-benefit analysis that all agencies shall utilize for application development activities;
- (9) determine and implement statewide efforts to standardize data elements;
- (10) coordinate with executive branch agencies to provide basic website standards for agencies that address common design standards and navigation standards, including:
  - (a) accessibility for individuals with disabilities in accordance with:
    - (i) the standards of 29 U.S.C. Sec. 794d; and
    - (ii) Section 63A-16-209;
  - (b) consistency with standardized government security standards;
  - (c) designing around user needs with data-driven analysis influencing management and development decisions, using qualitative and quantitative data to determine user goals, needs, and behaviors, and continual testing of the website, web-based form, web-based application, or digital service to ensure that user needs are addressed;
  - (d) providing users of the website, web-based form, web-based application, or digital service with the option for a more customized digital experience that allows users to complete digital transactions in an efficient and accurate manner; and
  - (e) full functionality and usability on common mobile devices;

- (11) consider, when making a purchase for an information system, cloud computing options, including any security benefits, privacy, data retention risks, and cost savings associated with cloud computing options;
- (12) develop systems and methodologies to review, evaluate, and prioritize existing information technology projects within the executive branch and report to the governor and the Government Operations Interim Committee in accordance with Section 63A-16-201 on a semiannual basis regarding the status of information technology projects;
- (13) assist the Governor's Office of Planning and Budget with the development of information technology budgets for agencies;
- (14) ensure that any training or certification required of a public official or public employee, as those terms are defined in Section 63G-22-102, complies with Title 63G, Chapter 22, State Training and Certification Requirements, if the training or certification is required:
  - (a) under this chapter;
  - (b) by the department; or
  - (c) by the division;
- (15) provide support to executive branch agencies for the information technology assets and functions that are unique to the agency and are mission critical functions of the agency;
- (16) provide in-house information technology staff support to executive branch agencies;
- (17) establish a committee composed of agency user groups to coordinate division services with agency needs;
- (18) assist executive branch agencies in complying with the requirements of any rule made by the chief information officer;
- (19) develop and implement an effective enterprise architecture governance model for the executive branch;
- (20) provide oversight of information technology projects that impact statewide information technology services, assets, or functions of state government to:
  - (a) control costs;
  - (b) ensure business value to a project;
  - (c) maximize resources;
  - (d) ensure the uniform application of best practices; and
  - (e) avoid duplication of resources;
- (21) develop a method of accountability to agencies for services provided by the department through service agreements with the agencies;
- (22) serve as a project manager for enterprise architecture, including management of applications, standards, and procurement of enterprise architecture;
- (23) coordinate the development and implementation of advanced state telecommunication systems;
- (24) provide services, including technical assistance:
  - (a) to executive branch agencies and subscribers to the services; and
  - (b) related to information technology or telecommunications;
- (25) establish telecommunication system specifications and standards for use by:
  - (a) one or more executive branch agencies; or
  - (b) one or more entities that subscribe to the telecommunication systems in accordance with Section 63A-16-302;
- (26) coordinate state telecommunication planning, in cooperation with:
  - (a) state telecommunication users;
  - (b) executive branch agencies; and
  - (c) other subscribers to the state's telecommunication systems;

- (27) cooperate with the federal government, other state entities, counties, and municipalities in the development, implementation, and maintenance of:
  - (a)
    - (i) governmental information technology; or
    - (ii) governmental telecommunication systems; and
  - (b)
    - (i) as part of a cooperative organization; or
    - (ii) through means other than a cooperative organization;
- (28) establish, operate, manage, and maintain:
  - (a) one or more state data centers; and
  - (b) one or more regional computer centers;
- (29) design, implement, and manage all state-owned, leased, or rented land, mobile, or radio telecommunication systems that are used in the delivery of services for state government or the state's political subdivisions;
- (30) in accordance with the executive branch strategic plan, implement minimum standards to be used by the division for purposes of compatibility of procedures, programming languages, codes, and media that facilitate the exchange of information within and among telecommunication systems;
- (31) establish standards for the information technology needs of a collection of executive branch agencies or programs that share common characteristics relative to the types of stakeholders the agencies or programs serve, including:
  - (a) project management;
  - (b) application development; and
  - (c) subject to Subsections (5) and 63G-6a-109.5(9), procurement;
- (32) provide oversight of information technology standards that impact multiple executive branch agency information technology services, assets, or functions to:
  - (a) control costs;
  - (b) ensure business value to a project;
  - (c) maximize resources;
  - (d) ensure the uniform application of best practices; and
  - (e) avoid duplication of resources; and
- (33) establish a system of accountability to user agencies through the use of service agreements.

Amended by Chapter 43, 2023 General Session

**63A-16-105 Director -- Authority.**

- (1) The executive director shall, with the approval of the governor, appoint the director.
- (2) The director:
  - (a) shall exercise all powers given to, and perform all duties imposed on, the division;
  - (b) has administrative jurisdiction over the division and each office within the division;
  - (c) may make changes in division personnel and service functions under the director's administrative jurisdiction; and
  - (d) may authorize a designee to perform appropriate responsibilities.
- (3) The director may, to facilitate division management, establish offices and bureaus to perform division functions.
- (4)
  - (a) The director may hire employees in the division and offices of the division as permitted by division resources.

- (b) Except as provided in Subsection (5), each employee of the division is exempt from career service or classified service status as provided in Section 63A-17-301.
- (5)
  - (a) Unless the employee voluntarily converted to an exempt position described in Section 63A-17-301, an employee of an executive branch agency who was a career service employee as of July 1, 2005, who was transferred to the division at the time it was newly created as the Department of Technology Services continues in the employee's career service status during the employee's service to the division if the duties of the position in the division are substantially similar to those in the employee's previous position.
  - (b) A career service employee transferred under the provisions of Subsection (5)(a), whose duties or responsibilities subsequently change, may not be converted to exempt status without the review process required by Subsection 63A-17-301(3).

Amended by Chapter 169, 2022 General Session

**63A-16-107 Utah Open Data Portal Website.**

- (1) As used in this section:
  - (a) "Governmental entity" means the same as that term is defined in Section 63G-2-103.
  - (b) "Public information" means:
    - (i) a record of a state governmental entity, a local governmental entity, or an independent entity that is classified as public under Title 63G, Chapter 2, Government Records Access and Management Act; or
    - (ii) subject to any specific limitations and requirements regarding the provision of financial information from the entity under Section 67-3-12, for an entity that is exempt from Title 63G, Chapter 2, Government Records Access and Management Act, records that would normally be classified as public if the entity were not exempt from Title 63G, Chapter 2, Government Records Access and Management Act.
  - (c) "Private, controlled, or protected information" means information classified as private, controlled, or protected under Title 63G, Chapter 2, Government Records Access and Management Act.
  - (d) "Website" means the Utah Open Data Portal Website created in this section.
- (2) There is created the Utah Open Data Portal Website to be administered by the division.
- (3) The website shall serve as a point of access for public information.
- (4) The division shall:
  - (a) establish and maintain the website;
  - (b) provide equipment, resources, and personnel as needed to establish and maintain the website;
  - (c) provide a mechanism for a governmental entity to gain access to the website for the purpose of posting and modifying public information; and
  - (d) maintain an archive of all public information posted to the website.
- (5) The timing for posting and the content of the public information posted to the website is the responsibility of the governmental entity posting the public information.
- (6) A governmental entity may not post private, controlled, or protected information to the website.
- (7) A person who negligently discloses private, controlled, or protected information is not criminally or civilly liable for improper disclosure of the information if the information is disclosed solely as a result of the preparation or publication of the website.

Amended by Chapter 249, 2023 General Session

**63A-16-108 Digital verifiable credential and records.**

- (1) As used in this section:
- (a) "Blockchain" means a distributed ledger of ordered electronic records that:
    - (i) is distributed across a network of computers;
    - (ii) utilizes technology to prevent the unauthorized alteration of electronic records; and
    - (iii) is mathematically verified.
  - (b) "Digital record schema" means a description of the data fields and tamper-evident technologies required to create a digital verifiable credential or digital verifiable record that can be registered on a distributed ledger technology.
  - (c) "Digital signature" means a tamper-evident, immutable, electronic seal that is equivalent in function and status to a notary seal issued by a government entity.
  - (d) "Digital verifiable credential" means a digital document that:
    - (i) attests to a fact;
    - (ii) is issued by a government entity;
    - (iii) can be mathematically verified; and
    - (iv) conveys rights, privileges, and legal enforceability equivalent to the possession of a physical credential of the same type.
  - (e) "Digital verifiable record" means a digital record that:
    - (i) is issued by a government entity or has been digitally signed by a government entity;
    - (ii) has a digital signature;
    - (iii) can be mathematically verified; and
    - (iv) conveys rights, privileges, and legal enforceability equivalent to the possession of a physical record of the same type.
  - (f) "Distributed ledger" means a decentralized database that is maintained by the consensus of replicated, shared, and synchronized digital data.
  - (g) "Government entity" means:
    - (i) the state;
    - (ii) a state agency; or
    - (iii) a political subdivision of the state.
  - (h) "Government operations privacy officer" means the government operations privacy officer described in Section 67-1-17.
  - (i) "State archivist" means the state archivist appointed under Section 63A-12-102.
  - (j) "State privacy officer" means the state privacy officer described in Section 67-3-13.
  - (k) "State registrar" means the state registrar of vital records appointed under Section 26B-8-102.
- (2) The Division of Technology Services shall:
- (a) provide recommendations to government entities regarding:
    - (i) appropriate digital record schemas that allow a government to issue a digital verifiable credential or record;
    - (ii) policies and procedures to protect the privacy of personal identifying information maintained within distributed ledger programs;
    - (iii) the manner and format in which an issuer may certify a document through blockchain; and
    - (iv) processes and procedures for the preservation, auditability, integrity, security, and confidentiality of digital verifiable credentials and records;
  - (b) create a pilot program for the implementation of digital verifiable credentials by governmental entities; and
  - (c) report to Public Utilities, Energy, and Technology Interim Committee by October 31, 2023, on the duties described in Subsections (2)(a) and (b).

- (3) In performing the duties described in Subsections (2)(a) and (b), the Division of Technology Services shall consult with:
- (a) the state archivist;
  - (b) the state privacy officer;
  - (c) the government operations privacy officer;
  - (d) the state registrar;
  - (e) private industry professionals with relevant expertise;
  - (f) the Utah League of Cities and Towns; and
  - (g) an association of counties in the state.

Enacted by Chapter 201, 2023 General Session

## **Part 2**

### **Chief Information Officer**

#### **63A-16-201 Chief information officer -- Appointment -- Powers -- Reporting.**

- (1) The director of the division shall serve as the state's chief information officer.
- (2) The chief information officer shall:
- (a) advise the governor on information technology policy; and
  - (b) perform those duties given the chief information officer by statute.
- (3)
- (a) The chief information officer shall report annually to:
    - (i) the governor; and
    - (ii) the Government Operations Interim Committee.
  - (b) The report required under Subsection (3)(a) shall:
    - (i) summarize the state's current and projected use of information technology;
    - (ii) summarize the executive branch strategic plan including a description of major changes in the executive branch strategic plan;
    - (iii) provide a brief description of each state agency's information technology plan;
    - (iv) include the status of information technology projects described in Subsection 63A-16-104(10);
    - (v) include the performance report described in Section 63A-16-211; and
    - (vi) include the expenditure of the funds provided for electronic technology, equipment, and hardware.

Amended by Chapter 43, 2023 General Session

#### **63A-16-202 Executive branch information technology strategic plan.**

- (1) In accordance with this section, the chief information officer shall prepare an executive branch information technology strategic plan:
- (a) that complies with this chapter; and
  - (b) that includes:
    - (i) a strategic plan for the:
      - (A) interchange of information related to information technology between executive branch agencies;

- (B) coordination between executive branch agencies in the development and maintenance of information technology and information systems, including the coordination of agency information technology plans described in Section 63A-16-203; and
  - (C) protection of the privacy of individuals who use state information technology or information systems, including the implementation of industry best practices for data and system security;
  - (ii) priorities for the development and implementation of information technology or information systems including priorities determined on the basis of:
    - (A) the importance of the information technology or information system; and
    - (B) the time sequencing of the information technology or information system; and
  - (iii) maximizing the use of existing state information technology resources.
- (2) In the development of the executive branch strategic plan, the chief information officer shall consult with all cabinet level officials.
- (3)
- (a) Unless withdrawn by the chief information officer or the governor in accordance with Subsection (3)(b), the executive branch strategic plan takes effect 30 days after the day on which the executive branch strategic plan is submitted to:
    - (i) the governor; and
    - (ii) the Government Operations Interim Committee.
  - (b) The chief information officer or the governor may withdraw the executive branch strategic plan submitted under Subsection (3)(a) if the governor or chief information officer determines that the executive branch strategic plan:
    - (i) should be modified; or
    - (ii) for any other reason should not take effect.
  - (c) The Government Operations Interim Committee may make recommendations to the governor and to the chief information officer if the commission determines that the executive branch strategic plan should be modified or for any other reason should not take effect.
  - (d) Modifications adopted by the chief information officer shall be resubmitted to the governor and the Government Operations Interim Committee for their review or approval as provided in Subsections (3)(a) and (b).
- (4)
- (a) The chief information officer shall annually, on or before January 1, modify the executive branch information technology strategic plan to incorporate security standards that:
    - (i) are identified as industry best practices in accordance with Subsections 63A-16-104(3) and (4); and
    - (ii) can be implemented within the budget of the department or the executive branch agencies.
  - (b) The chief information officer shall inform the speaker of the House of Representatives and the president of the Senate on or before January 1 of each year if best practices identified in Subsection (4)(a)(i) are not adopted due to budget issues considered under Subsection (4)(a)(ii).
- (5) Each executive branch agency shall implement the executive branch strategic plan by adopting an agency information technology plan in accordance with Section 63A-16-203.

Amended by Chapter 169, 2022 General Session

**63A-16-203 Agency information technology plans.**

(1)

- (a) On or before July 1 each year, each executive branch agency shall submit an agency information technology plan to the chief information officer at the department level, unless the governor or the chief information officer request an information technology plan be submitted by a subunit of a department, or by an executive branch agency other than a department.
  - (b) The information technology plans required by this section shall be in the form and level of detail required by the chief information officer, by administrative rule under Section 63A-16-205, and shall include, at least:
    - (i) the information technology objectives of the agency;
    - (ii) any performance measures used by the agency for implementing the agency's information technology objectives;
    - (iii) any planned expenditures related to information technology;
    - (iv) the agency's need for appropriations for information technology;
    - (v) how the agency's development of information technology coordinates with other state and local governmental entities;
    - (vi) any efforts the agency has taken to develop public and private partnerships to accomplish the information technology objectives of the agency;
    - (vii) the efforts the executive branch agency has taken to conduct transactions electronically in compliance with Section 46-4-503; and
    - (viii) the executive branch agency's plan for the timing and method of verifying the department's security standards, if an agency intends to verify the department's security standards for the data that the agency maintains or transmits through the department's servers.
- (2)
- (a) Except as provided in Subsection (2)(b), an agency information technology plan described in Subsection (1) shall comply with the executive branch strategic plan established in accordance with Section 63A-16-202.
  - (b) If the executive branch agency submitting the agency information technology plan justifies the need to depart from the executive branch strategic plan, an agency information technology plan may depart from the executive branch strategic plan to the extent approved by the chief information officer.
- (3) The chief information officer shall review each agency plan to determine:
- (a)
    - (i) whether the agency plan complies with the executive branch strategic plan and state information architecture; or
    - (ii) to the extent that the agency plan does not comply with the executive branch strategic plan or state information architecture, whether the executive branch entity is justified in departing from the executive branch strategic plan, or state information architecture; and
  - (b) whether the agency plan meets the information technology and other needs of:
    - (i) the executive branch agency submitting the plan; and
    - (ii) the state.
- (4) After the chief information officer conducts the review described in Subsection (3) of an agency information technology plan, the chief information officer may:
- (a) approve the agency information technology plan;
  - (b) disapprove the agency information technology plan; or
  - (c) recommend modifications to the agency information technology plan.
- (5) An executive branch agency or the department may not submit a request for appropriation related to information technology or an information technology system to the governor in accordance with Section 63J-1-201 until after the executive branch agency's information technology plan is approved by the chief information officer.



Amended by Chapter 169, 2022 General Session

**63A-16-205 Rulemaking -- Policies.**

- (1)
- (a) Except as provided in Subsection (2), the chief information officer shall, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
    - (i) establish standards that impose requirements on executive branch agencies related to the security of the statewide area network;
    - (ii) establish standards for when an agency must obtain approval before obtaining items described in Subsection 63G-6a-109.5(2);
    - (iii) specify the detail and format required in an agency information technology plan submitted in accordance with Section 63A-16-203;
    - (iv) establish standards related to the privacy policies of websites operated by or on behalf of an executive branch agency;
    - (v) subject to Subsection 63G-6a-109.5(9), establish standards for the acquisition, licensing, and sale of computer software;
    - (vi) specify the requirements for the project plan and business case analysis required under Section 63G-6a-109.5;
    - (vii) provide for project oversight of agency technology projects when required under Section 63G-6a-109.5;
    - (viii) establish, in accordance with Subsection 63G-6a-109.5(3), the implementation of the needs assessment for information technology purchases;
    - (ix) establish telecommunications standards and specifications in accordance with Subsection 63G-6a-109.5(25); and
    - (x) establish standards for accessibility of information technology by individuals with disabilities in accordance with Section 63A-16-209.
  - (b) The rulemaking authority granted by Subsection (1)(a) is in addition to any other rulemaking authority granted under this chapter.
- (2)
- (a) Notwithstanding Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and subject to Subsection (2)(b), the chief information officer may adopt a policy that outlines procedures to be followed by the chief information officer in facilitating the implementation of this title by executive branch agencies if the policy:
    - (i) is consistent with the executive branch strategic plan; and
    - (ii) is not required to be made by rule under Subsection (1) or Section 63G-3-201.
  - (b)
    - (i) A policy adopted by the chief information officer under Subsection (2)(a) may not take effect until 30 days after the day on which the chief information officer submits the policy to:
      - (A) the governor; and
      - (B) all cabinet level officials.
    - (ii) During the 30-day period described in Subsection (2)(b)(i), cabinet level officials may review and comment on a policy submitted under Subsection (2)(b)(i).
- (3)
- (a) Notwithstanding Subsection (1) or (2) or Title 63G, Chapter 3, Utah Administrative Rulemaking Act, without following the procedures of Subsection (1) or (2), the chief information officer may adopt a security procedure to be followed by executive branch agencies to protect the statewide area network if:

- (i) broad communication of the security procedure would create a significant potential for increasing the vulnerability of the statewide area network to breach or attack; and
  - (ii) after consultation with the chief information officer, the governor agrees that broad communication of the security procedure would create a significant potential increase in the vulnerability of the statewide area network to breach or attack.
- (b) A security procedure described in Subsection (3)(a) is classified as a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.
- (c) The chief information officer shall provide a copy of the security procedure as a protected record to:
- (i) the chief justice of the Utah Supreme Court for the judicial branch;
  - (ii) the speaker of the House of Representatives and the president of the Senate for the legislative branch;
  - (iii) the chair of the Utah Board of Higher Education; and
  - (iv) the chair of the State Board of Education.

Amended by Chapter 43, 2023 General Session

**63A-16-206 Coordination within the executive branch -- Cooperation with other branches.**

- (1) In accordance with the executive branch strategic plan and the requirements of this title, the chief information officer shall coordinate the development of information technology systems between two or more executive branch agencies subject to:
- (a) the budget approved by the Legislature; and
  - (b) Title 63J, Chapter 1, Budgetary Procedures Act.
- (2) In addition to the coordination described in Subsection (1), the chief information officer shall promote cooperation regarding information technology between branches of state government.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-16-207 Delegation of division functions.**

- (1)
- (a) If the conditions of Subsections (1)(b) and (2) are met and subject to the other provisions of this section, the chief information officer may delegate a function of the division to another executive branch agency or an institution of higher education by contract or other means authorized by law.
  - (b) The chief information officer may delegate a function of the division as provided in Subsection (1)(a) if in the judgment of the director of the executive branch agency and the chief information officer:
    - (i) the executive branch agency or institution of higher education has requested that the function be delegated;
    - (ii) the executive branch agency or institution of higher education has the necessary resources and skills to perform or control the function to be delegated; and
    - (iii) the function to be delegated is a unique or mission-critical function of the agency or institution of higher education.
- (2) The chief information officer may delegate a function of the division only when the delegation results in net cost savings or improved service delivery to the state as a whole or to the unique mission critical function of the executive branch agency.
- (3) The delegation of a function under this section shall:
- (a) be in writing;

- (b) contain all of the following:
  - (i) a precise definition of each function to be delegated;
  - (ii) a clear description of the standards to be met in performing each function delegated;
  - (iii) a provision for periodic administrative audits by the division;
  - (iv) a date on which the agreement shall terminate if the agreement has not been previously terminated or renewed; and
  - (v) any delegation of division staff to the agency to support the function in-house with the agency and rates to be charged for the delegated staff; and
- (c) include a cost-benefit analysis justifying the delegation.
- (4) An agreement to delegate functions to an executive branch agency or an institution of higher education may be terminated by the division if the results of an administrative audit conducted by the division reveals a lack of compliance with the terms of the agreement by the executive branch agency or institution of higher education.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-16-208 Delegation of division staff to executive branch agencies -- Prohibition against executive branch agency information technology staff.**

- (1)
  - (a) The chief information officer shall assign division staff to serve an agency in-house if the chief information officer and the executive branch agency director jointly determine it is appropriate to provide information technology services to:
    - (i) the agency's unique mission-critical functions and applications;
    - (ii) the agency's participation in and use of statewide enterprise architecture; and
    - (iii) the agency's use of coordinated technology services with other agencies that share similar characteristics with the agency.
  - (b)
    - (i) An agency may request the chief information officer to assign in-house staff support from the division.
    - (ii) The chief information officer shall respond to the agency's request for in-house staff support in accordance with Subsection (1)(a).
  - (c) The division shall enter into service agreements with an agency when division staff is assigned in-house to the agency under the provisions of this section.
  - (d) An agency that receives in-house staff support assigned from the division under the provision of this section is responsible for paying the rates charged by the division for that staff as established under Section 63A-16-301.
- (2)
  - (a) An executive branch agency may not create a full-time equivalent position or part-time position, or request an appropriation to fund a full-time equivalent position or part-time position under the provisions of Section 63J-1-201 for the purpose of providing information technology services to the agency unless:
    - (i) the chief information officer has approved a delegation under Section 63A-16-207; and
    - (ii) the division conducts an audit in relation to Section 63A-16-102 and finds that the delegation of information technology services to the agency meets the requirements of Section 63A-16-207.
  - (b) The prohibition against a request for appropriation under Subsection (2)(a) does not apply to a request for appropriation needed to pay rates imposed under Subsection (1)(d).

Amended by Chapter 169, 2022 General Session

**63A-16-209 Accessibility standards for executive branch agency information technology.**

- (1) The chief information officer shall establish, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
  - (a) minimum standards for accessibility of executive branch agency information technology by an individual with a disability that:
    - (i) include accessibility criteria for:
      - (A) agency websites;
      - (B) hardware and software procured by an executive branch agency; and
      - (C) information systems used by executive branch agency employees;
    - (ii) include a protocol to evaluate the standards via testing by individuals with a variety of access limitations; and
    - (iii) are, at minimum, consistent with the most recent Web Content Accessibility guidelines published by the World Wide Web Consortium; and
  - (b) grievance procedures for an individual with a disability who is unable to access executive branch agency information technology, including:
    - (i) a process for an individual with a disability to report the access issue to the chief information officer; and
    - (ii) a mechanism through which the chief information officer can respond to the report.
- (2) The chief information officer shall update the standards described in Subsection (1)(a) at least every three years to reflect advances in technology.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-16-210 Chief information security officer.**

- (1) The chief information officer shall appoint a chief information security officer.
- (2) The chief information security officer described in Subsection (1) shall:
  - (a) assess cybersecurity risks;
  - (b) coordinate with executive branch agencies to assess the sensitivity of information; and
  - (c) manage cybersecurity support for the department and executive branch agencies.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-16-211 Report to the Legislature.**

The division shall, in accordance with Section 63A-16-201, before November 1 each year, report to the Government Operations Interim Committee on:

- (1) performance measures that the division uses to assess the division's effectiveness in performing the division's duties under this part; and
- (2) the division's performance, evaluated in accordance with the performance measures described in Subsection (1).

Amended by Chapter 169, 2022 General Session

**63A-16-214 Zero trust architectures -- Implementation -- Requirements -- Reporting.**

- (1) As used in this section:
  - (a) "Endpoint detection and response" means a cybersecurity solution that continuously monitors end-user devices to detect and respond to cyber threats.

- (b) "Governmental entity" means:
    - (i) the state;
    - (ii) a political subdivision of the state; and
    - (iii) an entity created by the state or a political subdivision of the state, including an agency, board, bureau, commission, committee, department, division, institution, instrumentality, or office.
  - (c) "Multi-factor authentication" means using two or more different types of identification factors to authenticate a user's identity for the purpose of accessing systems and data, which may include:
    - (i) knowledge-based factors, which require the user to provide information that only the user knows, such as a password or personal identification number;
    - (ii) possession-based factors, which require the user to have a physical item that only the user possesses, such as a security token, key fob, subscriber identity module card, or smart phone application; or
    - (iii) inherence-based credentials, which require the user to demonstrate specific known biological traits attributable only to the user, such as fingerprints or facial recognition.
  - (d) "Zero trust architecture" means a security model, a set of system design principles, and a coordinated cybersecurity and system management strategy that employs continuous monitoring, risk-based access controls, secure identity and access management practices, and system security automation techniques to address the cybersecurity risk from threats inside and outside traditional network boundaries.
- (2) This section applies to:
- (a) all systems and data owned, managed, maintained, or utilized by or on behalf of an executive branch agency to access state systems or data; and
  - (b) all hardware, software, internal systems, and essential third-party software, including for on-premises, cloud, and hybrid environments.
- (3)
- (a) On or before November 1, 2023, the chief information officer shall develop uniform technology policies, standards, and procedures for use by executive branch agencies in implementing zero trust architecture and multi-factor authentication on all systems in accordance with this section.
  - (b) On or before July 1, 2024, the division shall consider adopting the enterprise security practices described in this section and consider implementing zero trust architecture and robust identity management practices, including:
    - (i) multi-factor authentication;
    - (ii) cloud-based enterprise endpoint detection and response solutions to promote real-time detection, and rapid investigation and remediation capabilities; and
    - (iii) robust logging practices to provide adequate data to support security investigations and proactive threat hunting.
- (4)
- (a) If implementing a zero trust architecture and multi-factor authentication, the division shall consider prioritizing the use of third-party cloud computing solutions that meet or exceed industry standards.
  - (b) The division shall consider giving preference to zero trust architecture solutions that comply with, are authorized by, or align to applicable federal guidelines, programs, and frameworks, including:
    - (i) the Federal Risk and Authorization Management Program;
    - (ii) the Continuous Diagnostics and Mitigation Program; and

- (iii) guidance and frameworks from the National Institute of Standards and Technology.
- (5)
- (a) In procuring third-party cloud computing solutions, the division may utilize established purchasing vehicles, including cooperative purchasing contracts and federal supply contracts, to facilitate efficient purchasing.
  - (b) The chief information officer shall establish a list of approved vendors that are authorized to provide zero trust architecture to governmental entities in the state.
  - (c) If an executive branch agency determines that procurement of a third-party cloud computing solution is not feasible, the executive branch agency shall provide a written explanation to the division of the reasons that a cloud computing solution is not feasible, including:
    - (i) the reasons why the executive branch agency determined that a third-party cloud computing solution is not feasible;
    - (ii) specific challenges or difficulties of migrating existing solutions to a cloud environment; and
    - (iii) the total expected cost of ownership of existing or alternative solutions compared to a cloud computing solution.
- (6)
- (a) On or before November 30 of each year, the chief information officer shall report on the progress of implementing zero trust architecture and multi-factor authentication to:
    - (i) the Public Utilities, Energy, and Technology Interim Committee; and
    - (ii) the Cybersecurity Commission created in Section 63C-25-201.
  - (b) The report described in Subsection (6)(a) may include information on:
    - (i) applicable guidance issued by the United States Cybersecurity and Infrastructure Security Agency; and
    - (ii) the progress of the division, executive branch agencies, and governmental entities with respect to:
      - (A) shifting away from a paradigm of trusted networks toward implementation of security controls based on a presumption of compromise;
      - (B) implementing principles of least privilege in administering information security programs;
      - (C) limiting the ability of entities that cause incidents to move laterally through or between agency systems;
      - (D) identifying incidents quickly; and
      - (E) isolating and removing unauthorized entities from agency systems as quickly as practicable, accounting for cyber threat intelligence or law enforcement purposes.

Enacted by Chapter 484, 2023 General Session

### **Part 3**

#### **Information Technology Services and Rates**

##### **63A-16-301 Cost based services -- Rates -- Submission to rate committee.**

- (1) The chief information officer shall:
  - (a) at the lowest practical cost, manage the delivery of efficient and cost-effective information technology and telecommunication services for:
    - (i) all executive branch agencies; and
    - (ii) entities that subscribe to the services in accordance with Section 63A-16-302; and
  - (b) provide priority service to public safety agencies.

- (2)
- (a) In accordance with this Subsection (2), the chief information officer shall prescribe a schedule of rates for all services rendered by the division to:
    - (i) an executive branch entity; or
    - (ii) an entity that subscribes to services rendered by the division in accordance with Section 63A-16-302.
  - (b) Each rate included in the schedule of rates required by Subsection (2)(a):
    - (i) shall be equitable;
    - (ii) should be based upon a zero based, full cost accounting of activities necessary to provide each service for which a rate is established; and
    - (iii) for each service multiplied by the projected consumption of the service recovers no more or less than the full cost of each service.
  - (c) Before charging a rate for its services to an executive branch agency or to a subscriber of services other than an executive branch agency, the chief information officer shall:
    - (i) submit the proposed rates and cost analysis to the Rate Committee established in Section 63A-1-114; and
    - (ii) obtain the approval of the Legislature as required by Section 63J-1-410.
  - (d) The chief information officer shall periodically conduct a market analysis of proposed rates, which analysis shall include a comparison of the division's rates with the rates of other public or private sector providers where comparable services and rates are reasonably available.

Amended by Chapter 169, 2022 General Session

**63A-16-302 Executive branch agencies -- Subscription by institutions.**

- (1) An executive branch agency in accordance with its agency information technology plan approved by the chief information officer shall:
  - (a) subscribe to the information technology services provided by the division; or
  - (b) contract with one or more alternate private providers of information technology services if the chief information officer determines that the purchase of the services from a private provider will:
    - (i) result in:
      - (A) cost savings;
      - (B) increased efficiency; or
      - (C) improved quality of services; and
    - (ii) not impair the interoperability of the state's information technology services.
- (2) An institution of higher education may subscribe to the services provided by the division if:
  - (a) the president of the institution recommends that the institution subscribe to the services of the division; and
  - (b) the Utah Board of Higher Education determines that subscription to the services of the division will result in cost savings or increased efficiency to the institution.
- (3) The following may subscribe to information technology services by requesting that the services be provided from the division:
  - (a) the legislative branch;
  - (b) the judicial branch;
  - (c) the State Board of Education;
  - (d) a political subdivision of the state;
  - (e) an agency of the federal government;
  - (f) an independent entity as defined in Section 63E-1-102; and

- (g) an elective constitutional officer of the executive department as defined in Subsection 63A-16-102(5)(b)(vii).

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-16-302.1 Reporting on consolidation of certain information technology services.**

- (1) The division shall, in collaboration with the Cybersecurity Commission created in Section 63C-27-201, identify opportunities, limitations, and barriers to enhancing the overall cybersecurity resilience of the state by consolidating:
  - (a) certain information technology services utilized by governmental entities; and
  - (b) to the extent feasible, the information technology networks that are operated or utilized by governmental entities.
- (2) On or before November 15, 2023, the division shall report the information described in Subsection (1) to:
  - (a) the Government Operations Interim Committee;
  - (b) the Infrastructure and General Government Appropriations Subcommittee; and
  - (c) the Cybersecurity Commission created in Section 63C-27-201.

Enacted by Chapter 496, 2023 General Session

**Part 5  
Integrated Technology**

**63A-16-501 Definitions.**

As used in this part:

- (1) "Center" means the Utah Geospatial Resource Center created in Section 63A-16-505.
- (2) "Database" means the State Geographic Information Database created in Section 63A-16-506.
- (3) "Geographic Information System" or "GIS" means a computer driven data integration and map production system that interrelates disparate layers of data to specific geographic locations.
- (4) "State Geographic Information Database" means the database created in Section 63A-16-506.
- (5) "Statewide Global Positioning Reference Network" or "network" means the network created in Section 63A-16-508.

Amended by Chapter 169, 2022 General Session

**63A-16-504 Information technology plan.**

- (1) In accordance with this section, the division shall submit an information technology plan to the chief information officer.
- (2) The information technology plan submitted by the division under this section shall include:
  - (a) the information required by Section 63A-16-202;
  - (b) a list of the services the division offers or plans to offer; and
  - (c) a description of the performance measures used by the division to measure the quality of the services described in Subsection (2)(b).
- (3)
  - (a) In submitting the information technology plan under this section, the division shall comply with Section 63A-16-203.



- (b) The information technology plan submitted by the division under this section is subject to the approval of the chief information officer as provided in Section 63A-16-203.

Amended by Chapter 169, 2022 General Session

**63A-16-505 Utah Geospatial Resource Center.**

- (1) There is created the Utah Geospatial Resource Center as part of the division.
- (2) The center shall:
  - (a) provide geographic information system services to state agencies under rules made under Section 63A-16-104 and policies established by the office;
  - (b) provide geographic information system services to federal government, local political subdivisions, and private persons under rules and policies established by the office;
  - (c) manage the State Geographic Information Database; and
  - (d) establish standard format, lineage, and other requirements for the database.
- (3)
  - (a) There is created a position of surveyor within the center.
  - (b) The surveyor under this Subsection (3) shall:
    - (i) be licensed as a professional land surveyor under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;
    - (ii) provide technical support to the office of lieutenant governor in the lieutenant governor's evaluation under Section 67-1a-6.5 of a proposed boundary action, as defined in Section 17-23-20;
    - (iii) as requested by a county surveyor, provide technical assistance to the county surveyor with respect to the county surveyor's responsibilities under Section 17-23-20;
    - (iv) fulfill the duties described in Section 17-50-105, if engaged to do so as provided in that section;
    - (v) assist the State Tax Commission in processing and quality assurance of boundary descriptions or maps into digital format for inclusion in the State Geographic Information Database;
    - (vi) coordinate with county recorders and surveyors to create a statewide parcel layer in the State Geographic Information Database containing parcel boundary, parcel identifier, parcel address, owner type, and county recorder contact information; and
    - (vii) facilitate and integrate the collection efforts of local government and federal agencies for data collection to densify and enhance the statewide Public Land Survey System reference network in the State Geographic Information Database.
- (4) The office may:
  - (a) make rules and establish policies to govern the center and the center's operations; and
  - (b) set fees for the services provided by the center.
- (5) The state may not sell information obtained from counties under Subsection (3)(b)(v).

Amended by Chapter 169, 2022 General Session

**63A-16-506 State Geographic Information Database.**

- (1) There is created a State Geographic Information Database to be managed by the center.
- (2) The database shall:
  - (a) serve as the central reference for all information contained in any GIS database by any state agency;
  - (b) serve as a clearing house and repository for all data layers required by multiple users;

- (c) serve as a standard format for geographic information acquired, purchased, or produced by any state agency;
  - (d) include an accurate representation of all civil subdivision boundaries of the state; and
  - (e) for each public highway, as defined in Section 72-1-102, in the state, include an accurate representation of the highway's centerline, physical characteristics, and associated street address ranges.
- (3) The center shall, in coordination with municipalities, counties, emergency communications centers, and the Department of Transportation:
- (a) develop the information described in Subsection (2)(e); and
  - (b) update the information described in Subsection (2)(e) in a timely manner after a county recorder records a final plat.
- (4) The center, in coordination with county assessors and metropolitan planning organizations:
- (a) shall inventory existing housing units and their general characteristics within each county of the first or second class to support infrastructure planning and economic development in each of those counties; and
  - (b) may inventory existing housing units and their general characteristics within one or more counties of the third, fourth, fifth, or sixth class to support infrastructure planning and economic development in one or more of those counties.
- (5)
- (a) The center shall, in coordination with the Governor's Office of Planning and Budget and county assessors, annually compile a statewide GIS database of all government-owned property parcels in internet-accessible, searchable, and map format.
  - (b) The database described in Subsection (5)(a) shall include a parcel's:
    - (i) number, if available;
    - (ii) owner;
    - (iii) location; and
    - (iv) size.
- (6) Each state agency that acquires, purchases, or produces digital geographic information data shall:
- (a) inform the center of the existence of the data layers and their geographic extent;
  - (b) allow the center access to all data classified public; and
  - (c) comply with any database requirements established by the center.
- (7) At least annually, the State Tax Commission shall deliver to the center information the State Tax Commission receives under Section 67-1a-6.5 relating to the creation or modification of the boundaries of political subdivisions.
- (8) The boundary of a political subdivision within the State Geographic Information Database is the official boundary of the political subdivision for purposes of meeting the needs of the United States Bureau of the Census in identifying the boundary of the political subdivision.

Amended by Chapter 197, 2023 General Session

**63A-16-507 Committee to award grants to counties for inventory and mapping of R.S. 2477 rights-of-way -- Use of grants -- Request for proposals.**

- (1) There is created within the center a committee to award grants to counties to inventory and map R.S. 2477 rights-of-way, associated structures, and other features as provided by Subsection (5).
- (2)
  - (a) The committee shall consist of:

- (i) the center manager;
  - (ii) a representative of the Governor's Office of Planning and Budget;
  - (iii) a representative of Utah State University Extension;
  - (iv) a representative of the Utah Association of Counties; and
  - (v) three county commissioners.
- (b) The committee members specified in Subsections (2)(a)(ii) through (2)(a)(iv) shall be selected by the organizations they represent.
- (c) The committee members specified in Subsection (2)(a)(v) shall be:
- (i) selected by the Utah Association of Counties;
  - (ii) from rural counties; and
  - (iii) from different regions of the state.
- (3)
- (a) The committee shall select a chair from the committee's membership.
  - (b) The committee shall meet upon the call of the chair or a majority of the committee members.
  - (c) Four members of the committee constitute a quorum.
- (4)
- (a) Committee members who are state government employees shall receive no additional compensation for their work on the committee.
  - (b) Committee members who are not state government employees shall receive no compensation or expenses from the state for their work on the committee.
- (5)
- (a) The committee shall award grants to counties to:
    - (i) inventory and map R.S. 2477 rights-of-way using Global Positioning System (GPS) technology; and
    - (ii) photograph:
      - (A) roads and other evidence of construction of R.S. 2477 rights-of-way;
      - (B) structures or natural features that may be indicative of the purpose for which an R.S. 2477 right-of-way was created, such as mines, agricultural facilities, recreational facilities, or scenic overlooks; and
      - (C) evidence of valid and existing rights on federal lands, such as mines and agricultural facilities.
  - (b)
    - (i) The committee may allow counties, while they are conducting the activities described in Subsection (5)(a), to use grant money to inventory, map, or photograph other natural or cultural resources.
    - (ii) Activities funded under Subsection (5)(b)(i) must be integrated with existing programs underway by state agencies, counties, or institutions of higher education.
  - (c) Maps and other data acquired through the grants shall become a part of the State Geographic Information Database.
  - (d) Counties shall provide an opportunity to interested parties to submit information relative to the mapping and photographing of R.S. 2477 rights-of-way and other structures as provided in Subsections (5)(a) and (5)(b).
- (6)
- (a) The committee shall develop a request for proposals process and issue a request for proposals.
  - (b) The request for proposals shall require each grant applicant to submit an implementation plan and identify any monetary or in-kind contributions from the county.

- (c) In awarding grants, the committee shall give priority to proposals to inventory, map, and photograph R.S. 2477 rights-of-way and other structures as specified in Subsection (5)(a) which are located on federal lands that:
  - (i) a federal land management agency proposes for special management, such as lands to be managed as an area of critical environmental concern or primitive area; or
  - (ii) are proposed to receive a special designation by Congress, such as lands to be designated as wilderness or a national conservation area.
- (7) Each county that receives a grant under the provision of this section shall provide a copy of all data regarding inventory and mapping to the Utah Geospatial Resource Center for inclusion in the state database.

Amended by Chapter 162, 2021 General Session  
Renumbered and Amended by Chapter 344, 2021 General Session  
Amended by Chapter 382, 2021 General Session

**63A-16-508 Statewide Global Positioning Reference Network created -- Rulemaking authority.**

- (1)
  - (a) There is created the Statewide Global Positioning Reference Network to improve the quality of geographic information system data and the productivity, efficiency, and cost-effectiveness of government services.
  - (b) The network shall provide a system of permanently mounted, fully networked, global positioning system base stations that will provide real time radio navigation and establish a standard statewide coordinate reference system.
  - (c) The center shall administer the network.
- (2)
  - (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the chief information officer shall make rules providing for operating policies and procedures for the network.
  - (b) When making rules under this section, the chief information officer shall consider:
    - (i) network development that serves a public purpose;
    - (ii) increased productivity and efficiency for state agencies; and
    - (iii) costs and longevity of the network.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-16-509 Monument Replacement and Restoration Committee.**

- (1) As used in this section:
  - (a) "Committee" means the Monument Replacement and Restoration Committee created in this section.
  - (b) "Corner" means the same as that term is defined in Section 17-23-17.5.
  - (c) "Monument" means the same as that term is defined in Section 17-23-17.5.
- (2)
  - (a) There is created the Monument Replacement and Restoration Committee composed of the following seven members:
    - (i) five members appointed by an organization or association that represents Utah counties:
      - (A) that have knowledge and understanding of the Public Land Survey System; and
      - (B) who each represents a different county; and

- (ii) two members, appointed by the center, who have a knowledge and understanding of the Public Land Survey System.
  - (b)
    - (i) Except as provided in Subsection (2)(b)(ii), a member appointed to the committee is appointed for a four-year term.
    - (ii) The director of the center shall, at the time an entity appoints or reappoints an individual to serve on the committee, adjust the length of the appointed individual's term, as necessary, to ensure that the terms of committee members are staggered so that approximately half of the committee members are appointed every two years.
    - (iii) When a vacancy occurs on the committee for any reason, the replacement appointee shall serve on the committee for the unexpired term.
  - (c) The committee shall elect one committee member to serve as chair of the committee for a term of two years.
  - (d) A majority of the committee constitutes a quorum, and the action of a majority of a quorum constitutes the action of the committee.
  - (e)
    - (i) The center shall provide staff support to the committee.
    - (ii) An individual who is a member of the committee may not serve as staff to the committee.
  - (f) A member of the committee may not receive compensation for the member's service on the committee.
  - (g) The committee may adopt bylaws to govern the committee's operation.
- (3)
- (a) The committee shall administer a grant program to assist counties in maintaining and protecting corners or monuments.
  - (b) A county wishing to receive a grant under the program described in Subsection (3)(a) shall submit to the committee an application that:
    - (i) identifies one or more monuments in the county that are in need of protection or rehabilitation;
    - (ii) establishes a plan that is consistent with federal law or rule to protect or rehabilitate each monument identified under Subsection (3)(b)(i); and
    - (iii) requests a specific amount of funding to complete the plan established under Subsection (3)(b)(ii).
  - (c) The committee shall:
    - (i) adopt criteria to:
      - (A) evaluate whether a monument identified by a county under Subsection (3)(b)(i) needs protection or rehabilitation; and
      - (B) identify which monuments identified by a county under Subsection (3)(b)(i) have the greatest need of protection or rehabilitation;
    - (ii) evaluate each application submitted by a county under Subsection (3)(b) using the criteria adopted by the committee under Subsection (3)(c)(i);
    - (iii) subject to sufficient funding and Subsection (3)(d), award grants to counties whose applications are most favorably evaluated under Subsection (3)(c)(ii); and
    - (iv) establish a date by which a county awarded a grant under Subsection (3)(c)(iii) shall report back to the committee.
  - (d) The committee may not award a grant to a county under this section in an amount greater than \$100,000.
- (4) A county that is awarded a grant under this section shall:

- (a) document the work performed by the county, pursuant to the plan established by the county under Subsection (3)(b)(ii), to protect or rehabilitate a monument; and
  - (b) before the date established under Subsection (3)(c)(iv), report to the committee on the work performed by the county.
- (5)
- (a) If the committee has not expended all of the funds appropriated to the committee by the Legislature for the fulfillment of the committee's duties under this section before December 31, 2017, the committee shall disburse any remaining funds equally among all counties that have established a dedicated monument preservation fund by ordinance as provided in Section 17-23-19.
  - (b) A county to which the center has disbursed funds under Subsection (5)(a) shall:
    - (i) deposit the funds into the county's monument preservation fund; and
    - (ii) expend the funds, in consultation with the committee, for the maintenance and preservation of monuments in the county.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-16-510 Utah Cyber Center -- Creation -- Duties.**

- (1) As used in this section:
- (a) "Governmental entity" means the same as that term is defined in Section 63G-2-103.
  - (b) "Utah Cyber Center" means the Utah Cyber Center created in this section.
- (2)
- (a) There is created within the division the Utah Cyber Center.
  - (b) The chief information security officer appointed under Section 63A-16-210 shall serve as the director of the Utah Cyber Center.
- (3) The division shall operate the Utah Cyber Center in partnership with the following entities within the Department of Public Safety:
- (a) the Statewide Information and Analysis Center;
  - (b) the State Bureau of Investigation; and
  - (c) the Division of Emergency Management.
- (4) In addition to the entities described in Subsection (3), the Utah Cyber Center shall collaborate with:
- (a) the Cybersecurity Commission created in Section 63C-27-201;
  - (b) the Office of the Attorney General;
  - (c) the Utah Education and Telehealth Network created in Section 53B-17-105;
  - (d) appropriate federal partners, including the Federal Bureau of Investigation and the Cybersecurity and Infrastructure Security Agency;
  - (e) appropriate information sharing and analysis centers;
  - (f) associations representing political subdivisions in the state, including the Utah League of Cities and Towns and the Utah Association of Counties; and
  - (g) any other person the division believes is necessary to carry out the duties described in Subsection (5).
- (5) The Utah Cyber Center shall, within legislative appropriations:
- (a) by June 30, 2024, develop a statewide strategic cybersecurity plan for executive branch agencies and other governmental entities;
  - (b) with respect to executive branch agencies:
    - (i) identify, analyze, and, when appropriate, mitigate cyber threats and vulnerabilities;
    - (ii) coordinate cybersecurity resilience planning;

- (iii) provide cybersecurity incident response capabilities; and
- (iv) recommend to the division standards, policies, or procedures to increase the cyber resilience of executive branch agencies individually or collectively;
- (c) at the request of a governmental entity, coordinate cybersecurity incident response for an incident affecting the governmental entity in accordance with Section 63A-16-511;
- (d) promote cybersecurity best practices;
- (e) share cyber threat intelligence with governmental entities and, through the Statewide Information and Analysis Center, with other public and private sector organizations;
- (f) serve as the state cybersecurity incident response hotline to receive reports of breaches of system security, including notification or disclosure under Section 13-44-202 or 63A-16-511;
- (g) develop incident response plans to coordinate federal, state, local, and private sector activities and manage the risks associated with an attack or malfunction of critical information technology systems within the state;
- (h) coordinate, develop, and share best practices for cybersecurity resilience in the state;
- (i) identify sources of funding to make cybersecurity improvements throughout the state;
- (j) develop a sharing platform to provide resources based on information, recommendations, and best practices; and
- (k) partner with institutions of higher education and other public and private sector organizations to increase the state's cyber resilience.

Enacted by Chapter 496, 2023 General Session

**63A-16-511 Reporting to the Utah Cyber Center -- Assistance to governmental entities -- Records.**

- (1) As used in this section:
  - (a) "Governmental entity" means the same as that term is defined in Section 63G-2-103.
  - (b) "Utah Cyber Center" means the Utah Cyber Center created in Section 63A-16-510.
- (2) A governmental entity shall contact the Utah Cyber Center as soon as practicable when the governmental entity becomes aware of a breach of system security.
- (3) The Utah Cyber Center shall provide the governmental entity with assistance in responding to the breach of system security, which may include:
  - (a) conducting all or part of the investigation required under Subsection 13-44-202(1)(a);
  - (b) assisting law enforcement with the law enforcement investigation if needed;
  - (c) determining the scope of the breach of system security;
  - (d) assisting the governmental entity in restoring the reasonable integrity of the system; or
  - (e) providing any other assistance in response to the reported breach of system security.
- (4)
  - (a) A person providing information to the Utah Cyber Center may submit the information required in Section 63G-2-309 to request that the information submitted by the person and information produced by the Utah Cyber Center in the course of the Utah Cyber Center's investigation be classified as a confidential protected record.
  - (b) Information submitted to the Utah Cyber Center under Subsection 13-44-202(1)(c) regarding a breach of system security may include information regarding the type of breach, the attack vector, attacker, indicators of compromise, and other details of the breach that are requested by the Utah Cyber Center.
  - (c) A governmental entity that is required to submit information under Section 63A-16-511 shall provide records to the Utah Cyber Center as a shared record in accordance with Section 63G-2-206.

Enacted by Chapter 496, 2023 General Session

## Part 6 Utah Public Notice Website

### **63A-16-601 Utah Public Notice Website -- Establishment and administration.**

- (1) As used in this part:
  - (a) "Executive board" means the same as that term is defined in Section 67-1-2.5.
  - (b) "Public body" means the same as that term is defined in Section 52-4-103.
  - (c) "Public information" means a public body's public notices, minutes, audio recordings, and other materials that are required to be posted to the website under Title 52, Chapter 4, Open and Public Meetings Act, or other statute or state agency rule.
  - (d) "Website" means the Utah Public Notice Website created in this section.
- (2) There is created the Utah Public Notice Website to be administered by the division.
- (3) The website shall consist of an Internet website provided to assist the public to find posted public information.
- (4) The Division of Archives and Records Service, with the technical assistance of the Division of Technology Services, shall create the website that shall:
  - (a) allow a public body, or other certified entity, to easily post any public information, including the contact information required under Subsections 17B-1-303(9) and 17D-1-106(1)(b)(ii);
  - (b) allow the public to easily search the public information by:
    - (i) public body name;
    - (ii) date of posting of the notice;
    - (iii) date of any meeting or deadline included as part of the public information; and
    - (iv) any other criteria approved by the Division of Archives and Records Service;
  - (c) allow the public to easily search and view past, archived public information;
  - (d) allow an individual to subscribe to receive updates and notices associated with a public body or a particular type of public information;
  - (e) have a unique and simplified website address;
  - (f) be directly accessible via a link from the main page of the official state website; and
  - (g) allow a newspaper to request and automatically receive a transmission of a posting to the website as the posting occurs;
  - (h) include other links, features, or functionality that will assist the public in obtaining and reviewing public information posted on the website, as may be approved by the division; and
  - (i) be guided by the principles described in Subsection 63A-16-202(2).
- (5)
  - (a) Subject to Subsection (5)(b), the Division of Archives and Records Service and the governor's office shall coordinate to ensure that the website, the database described in Section 67-1-2.5, and the website described in Section 67-1-2.5 automatically share appropriate information in order to ensure that:
    - (i) an individual who subscribes to receive information under Subsection (4)(d) for an executive board automatically receives notifications of vacancies on the executive board that will be publicly filled, including a link to information regarding how an individual may apply to fill the vacancy; and



- (ii) an individual who accesses an executive board's information on the website has access to the following through the website:
  - (A) the executive board's information in the database, except an individual's physical address, e-mail address, or phone number; and
  - (B) the portal described in Section 67-1-2.5 through which an individual may provide input on an appointee to, or member of, the executive board.
- (b) The Division of Archives and Records Service and the governor's office shall comply with Subsection (5)(a) as soon as reasonably possible within existing funds appropriated to the Division of Archives and Records Service and the governor's office.
- (6) Before August 1 of each year, the Division of Archives and Records Service shall:
  - (a) identify each executive board that is a public body that did not submit to the website a notice of a public meeting during the previous fiscal year; and
  - (b) report the name of each identified executive board to the governor's boards and commissions administrator.
- (7) The Division of Archives and Records Service is responsible for:
  - (a) establishing and maintaining the website, including the provision of equipment, resources, and personnel as is necessary;
  - (b) providing a mechanism for public bodies or other certified entities to have access to the website for the purpose of posting and modifying public information; and
  - (c) maintaining an archive of all public information posted to the website.
- (8) A public body is responsible for the content the public body is required to post to the website and the timing of posting of that information.

Renumbered and Amended by Chapter 84, 2021 General Session  
Amended by Chapter 344, 2021 General Session, (Coordination Clause)  
Renumbered and Amended by Chapter 344, 2021 General Session  
Amended by Chapter 355, 2021 General Session

**63A-16-602 Notice and training by the Division of Archives and Records Service.**

- (1) The Division of Archives and Records Service shall provide notice of the provisions and requirements of this chapter to all public bodies that are subject to the provision of Subsection 52-4-202(3)(a).
- (2) The Division of Archives and Records Service shall, as necessary, provide periodic training on the use of the website to public bodies that are authorized to post notice on the website.

Amended by Chapter 435, 2023 General Session

**Part 8**  
**Single Sign-on Portal**

**63A-16-801 Definitions.**

As used in this part:

- (1) "Business data" means data collected by the state about a person doing business in the state.
- (2) "Single sign-on business portal" means the web portal described in Section 63A-16-802.
- (3) "Single sign-on citizen portal" means the web portal described in Section 63A-16-803.

- (4) "Web portal" means an Internet webpage that can be accessed by a person that enters the person's unique user information in order to access secure information.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-16-802 Single sign-on business portal -- Creation.**

- (1) The division shall, in consultation with the entities described in Subsection (4), design and create a single sign-on business portal that is:
- (a) a web portal through which a person may access data described in Subsection (2), as agreed upon by the entities described in Subsection (4); and
  - (b) secure, centralized, and interconnected.
- (2) The division shall ensure that the single sign-on business portal allows a person doing business in the state to access, at a single point of entry, all relevant state-collected business data about the person, including information related to:
- (a) business registration;
  - (b) workers' compensation;
  - (c) beginning December 1, 2020, tax liability and payment; and
  - (d) other information collected by the state that the department determines is relevant to a person doing business in the state.
- (3) The division shall develop the single sign-on business portal:
- (a) using an open platform that:
    - (i) facilitates participation in the web portal by a state entity;
    - (ii) allows for optional participation by a political subdivision of the state; and
    - (iii) contains a link to the State Tax Commission website; and
  - (b) in a manner that anticipates the creation of the single sign-on citizen portal described in Section 63A-16-803.
- (4) In developing the single sign-on business portal, the division shall consult with:
- (a) the Department of Commerce;
  - (b) the State Tax Commission;
  - (c) the Labor Commission;
  - (d) the Department of Workforce Services;
  - (e) the Governor's Office of Planning and Budget;
  - (f) the Utah League of Cities and Towns;
  - (g) the Utah Association of Counties; and
  - (h) the business community that is likely to use the single sign-on business portal.
- (5) The division shall ensure that the single sign-on business portal is fully operational no later than May 1, 2021.

Renumbered and Amended by Chapter 344, 2021 General Session

Amended by Chapter 382, 2021 General Session

**63A-16-803 Single sign-on citizen portal -- Creation.**

- (1) The division shall, in consultation with the entities described in Subsection (4), design and create a single sign-on citizen portal that is:
- (a) a web portal through which an individual may access information and services described in Subsection (2), as agreed upon by the entities described in Subsection (4); and
  - (b) secure, centralized, and interconnected.

- (2) The division shall ensure that the single sign-on citizen portal allows an individual, at a single point of entry, to:
  - (a) access and submit an application for:
    - (i) medical and support programs including:
      - (A) a medical assistance program administered under Title 26B, Chapter 3, Health Care - Administration and Assistance, including Medicaid;
      - (B) the Children's Health Insurance Program under Title 26B, Chapter 3, Part 9, Utah Children's Health Insurance Program;
      - (C) the Primary Care Network as defined in Section 26B-3-211; and
      - (D) the Women, Infants, and Children program administered under 42 U.S.C. Sec. 1786;
    - (ii) unemployment insurance under Title 35A, Chapter 4, Employment Security Act;
    - (iii) workers' compensation under Title 34A, Chapter 2, Workers' Compensation Act;
    - (iv) employment with a state agency;
    - (v) a driver license or state identification card renewal under Title 53, Chapter 3, Uniform Driver License Act;
    - (vi) a birth or death certificate under Title 26B, Chapter 8, Part 1, Vital Statistics; and
    - (vii) a hunting or fishing license under Title 23A, Chapter 4, Licenses, Permits, Certificates of Registration, and Tags;
  - (b) access the individual's:
    - (i) transcripts from an institution of higher education described in Section 53B-2-101; and
    - (ii) immunization records maintained by the Department of Health and Human Services;
  - (c) register the individual's vehicle under Title 41, Chapter 1a, Part 2, Registration, with the Motor Vehicle Division of the State Tax Commission;
  - (d) file the individual's state income taxes under Title 59, Chapter 10, Individual Income Tax Act, beginning December 1, 2020;
  - (e) access information about positions available for employment with the state; and
  - (f) access any other service or information the department determines is appropriate in consultation with the entities described in Subsection (4).
- (3) The division shall develop the single sign-on citizen portal using an open platform that:
  - (a) facilitates participation in the portal by a state entity;
  - (b) allows for optional participation in the portal by a political subdivision of the state; and
  - (c) contains a link to the State Tax Commission website.
- (4) In developing the single sign-on citizen portal, the department shall consult with:
  - (a) each state executive branch agency that administers a program, provides a service, or manages applicable information described in Subsection (2);
  - (b) the Utah League of Cities and Towns;
  - (c) the Utah Association of Counties; and
  - (d) other appropriate state executive branch agencies.
- (5) The division shall ensure that the single sign-on citizen portal is fully operational no later than January 1, 2025.

Amended by Chapter 34, 2023 General Session  
Amended by Chapter 329, 2023 General Session

**63A-16-804 Report.**

- (1) The division shall report to the Government Operations Interim Committee before November 30 of each year regarding:

- (a) the progress the division has made in developing the single sign-on business portal and the single sign-on citizen portal and, once that development is complete, regarding the operation of the single sign-on business portal and the single sign-on citizen portal;
  - (b) the division's goals and plan for each of the next five years to fulfill the division's responsibilities described in this part; and
  - (c) whether the division recommends any change to the single sign-on fee being charged under Section 13-1-2.
- (2) The Government Operations Interim Committee shall annually:
- (a) review the single sign-on fee being charged under Section 13-1-2;
  - (b) determine whether the revenue from the single sign-on fee is adequate for designing and developing and then, once developed, operating and maintaining the single sign-on web portal; and
  - (c) make any recommendation to the Legislature that the committee considers appropriate concerning:
    - (i) the single sign-on fee; and
    - (ii) the development or operation of the single sign-on business portal and the single sign-on citizen portal.

Amended by Chapter 169, 2022 General Session

## **Part 9**

### **Technology Innovation Act**

#### **63A-16-901 Definitions.**

As used in this part:

- (1) "Executive branch agency" means a department, division, or other agency within the executive branch of state government.
- (2) "Governor's budget office" means the Governor's Office of Planning and Budget, created in Section 63J-4-201.
- (3) "Review board" means the Architecture Review Board established within the department.
- (4) "Technology innovation" means a new information technology not previously in use or a substantial adaptation or modification of an existing information technology.
- (5) "Technology proposal" means a proposal to implement a technology innovation designed to result in a greater efficiency in a government process or a cost saving in the delivery of a government service, or both.

Renumbered and Amended by Chapter 344, 2021 General Session

Amended by Chapter 382, 2021 General Session

#### **63A-16-902 Submitting a technology proposal -- Review process.**

- (1) Multiple executive branch agencies may jointly submit to the chief information officer a technology proposal, on a form or in a format specified by the division.
- (2) The chief information officer shall transmit to the review board each technology proposal the chief information officer determines meets the form or format requirements of the division.
- (3) The review board shall:

- (a) conduct a technical review of a technology proposal transmitted by the chief information officer;
- (b) determine whether the technology proposal merits further review and consideration by the chief information officer, based on the technology proposal's likelihood to:
  - (i) be capable of being implemented effectively; and
  - (ii) result in greater efficiency in a government process or a cost saving in the delivery of a government service, or both; and
- (c) transmit a technology proposal to the chief information officer and to the governor's budget office, if the review board determines that the technology proposal merits further review and consideration by the chief information officer.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-16-903 Chief information officer review and approval of technology proposals.**

- (1) The chief information officer shall review and evaluate each technology proposal that the review board transmits to the chief information officer.
- (2) The chief information officer may approve and recommend that the division provide funding from legislative appropriations for a technology proposal if, after the chief information officer's review and evaluation of the technology proposal:
  - (a) the chief information officer determines that there is a reasonably good likelihood that the technology proposal:
    - (i) is capable of being implemented effectively; and
    - (ii) will result in greater efficiency in a government process or a cost saving in the delivery of a government service, or both; and
  - (b) the chief information officer receives approval from the governor's budget office for the technology proposal.
- (3) The chief information officer may:
  - (a) prioritize multiple approved technology proposals based on their relative likelihood of achieving the goals described in Subsection (2); and
  - (b) recommend funding based on the chief information officer's prioritization under Subsection (3) (a).
- (4) The division shall:
  - (a) track the implementation and success of a technology proposal approved by the chief information officer;
  - (b) evaluate the level of the technology proposal's implementation effectiveness and whether the implementation results in greater efficiency in a government process or a cost saving in the delivery of a government service, or both; and
  - (c) report the results of the division's tracking and evaluation:
    - (i) to the chief information officer, as frequently as the chief information officer requests; and
    - (ii) at least annually to the Government Operations Interim Committee.
- (5) The division may expend money appropriated by the Legislature to pay for expenses incurred by executive branch agencies in implementing a technology proposal that the chief information officer has approved.

Amended by Chapter 169, 2022 General Session

## Part 10 Criminal and Juvenile Justice Database

### **63A-16-1001 Definitions.**

As used in this part:

- (1) "Commission" means the State Commission on Criminal and Juvenile Justice created in Section 63M-7-201.
- (2) "Criminal justice agency" means an agency or institution directly involved in the apprehension, prosecution, and incarceration of an individual involved in criminal activity, including law enforcement, correctional facilities, jails, courts, probation, and parole.
- (3) "Database" means the criminal and juvenile justice database created in this part.
- (4) "Division" means the Division of Technology Services created in Section 63A-16-103.

Amended by Chapter 161, 2023 General Session

### **63A-16-1002 Criminal and juvenile justice database.**

- (1) The commission shall oversee the creation and management of a criminal and juvenile justice database for information and data required to be reported to the commission, organized by county, and accessible to all criminal justice agencies in the state.
- (2) The division shall assist with the development and management of the database.
- (3) The division, in collaboration with the commission, shall create:
  - (a) master standards and formats for information submitted to the database;
  - (b) a portal, bridge, website, or other method for reporting entities to provide the information;
  - (c) a master data management index or system to assist in the retrieval of information in the database;
  - (d) a protocol for accessing information in the database that complies with state privacy regulations; and
  - (e) a protocol for real-time audit capability of all data accessed through the portal by participating data source, data use entities, and regulators.
- (4) Each criminal justice agency charged with reporting information to the commission shall provide the data or information to the database in a form prescribed by the commission.
- (5) The database shall be the repository for the statutorily required data described in:
  - (a) Section 13-53-111, recidivism reporting requirements;
  - (b) Section 17-22-32, county jail reporting requirements;
  - (c) Section 17-55-201, Criminal Justice Coordinating Councils reporting;
  - (d) Section 41-6a-511, courts to collect and maintain data;
  - (e) Section 53-23-101, reporting requirements for reverse-location warrants;
  - (f) Section 53-24-102, sexual assault offense reporting requirements for law enforcement agencies;
  - (g) Section 63M-7-214, law enforcement agency grant reporting;
  - (h) Section 63M-7-216, prosecutorial data collection;
  - (i) Section 64-13-21, supervision of sentenced offenders placed in community;
  - (j) Section 64-13-25, standards for programs;
  - (k) Section 64-13-45, department reporting requirements;
  - (l) Section 64-13e-104, housing of state probationary inmates or state parole inmates;
  - (m) Section 77-7-8.5, use of tactical groups;
  - (n) Section 77-11b-404, forfeiture reporting requirements;

- (o) Section 77-20-103, release data requirements;
  - (p) Section 77-22-2.5, court orders for criminal investigations;
  - (q) Section 78A-2-109.5, court demographics reporting;
  - (r) Section 80-6-104, data collection on offenses committed by minors; and
  - (s) any other statutes which require the collection of specific data and the reporting of that data to the commission.
- (6) The commission shall report:
- (a) progress on the database, including creation, configuration, and data entered, to the Law Enforcement and Criminal Justice Interim Committee not later than November 2022; and
  - (b) all data collected as of December 31, 2022, to the Law Enforcement and Criminal Justice Interim Committee, the House Law Enforcement and Criminal Justice Standing Committee, and the Senate Judiciary, Law Enforcement and Criminal Justice Standing Committee not later than January 16, 2023.

Amended by Chapter 158, 2023 General Session

Amended by Chapter 161, 2023 General Session

Amended by Chapter 382, 2023 General Session

Amended by Chapter 448, 2023 General Session

## **Chapter 17**

### **Utah State Personnel Management Act**

#### **Part 1**

#### **General Provisions**

#### **63A-17-101 Title.**

This chapter is known as the "Utah State Personnel Management Act."

Renumbered and Amended by Chapter 344, 2021 General Session

#### **63A-17-102 Definitions.**

As used in this chapter:

- (1) "Agency" means any department or unit of Utah state government with authority to employ personnel.
- (2) "Career service" means positions under schedule B as defined in Section 63A-17-301.
- (3) "Career service employee" means an employee who has successfully completed a probationary period of service in a position covered by the career service.
- (4) "Career service status" means status granted to employees who successfully complete probationary periods for competitive career service positions.
- (5) "Classified service" means those positions subject to the classification and compensation provisions of Section 63A-17-307.
- (6) "Controlled substance" means controlled substance as defined in Section 58-37-2.
- (7)
  - (a) "Demotion" means a disciplinary action resulting in a reduction of an employee's current actual wage.

- (b) "Demotion" does not mean:
  - (i) a nondisciplinary movement of an employee to another position without a reduction in the current actual wage; or
  - (ii) a reclassification of an employee's position under the provisions of Subsection 63A-17-307(3) and rules made by the department.
- (8) "Director" means the director of the division.
- (9) "Disability" means a physical or mental disability as defined and protected under the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq.
- (10) "Division" means the Division of Human Resource Management, created in Section 63A-17-105.
- (11) "Employee" means any individual in a paid status covered by the career service or classified service provisions of this chapter.
- (12) "Examining instruments" means written or other types of proficiency tests.
- (13) "Human resource function" means those duties and responsibilities specified:
  - (a) under Section 63A-17-106;
  - (b) under rules of the division; and
  - (c) under other state or federal statute.
- (14) "Market comparability adjustment" means a salary range adjustment determined necessary through a market survey of salary data and other relevant information.
- (15) "Probationary employee" means an employee serving a probationary period in a career service position but who does not have career service status.
- (16) "Probationary period" means that period of time determined by the division that an employee serves in a career service position as part of the hiring process before career service status is granted to the employee.
- (17) "Probationary status" means the status of an employee between the employee's hiring and the granting of career service status.
- (18) "Structure adjustment" means a division modification of salary ranges.
- (19) "Temporary employee" means career service exempt employees described in Subsection 63A-17-301(1)(r).
- (20) "Total compensation" means salaries and wages, bonuses, paid leave, group insurance plans, retirement, and all other benefits offered to state employees as inducements to work for the state.

Amended by Chapter 209, 2022 General Session

**63A-17-103 Principles guiding interpretation of chapter and adoption of rules -- Merit principles.**

- (1) The division shall establish a career service system designed in a manner that will provide for the effective implementation of the following merit principles:
  - (a) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;
  - (b) providing for equitable and competitive compensation;
  - (c) training employees as needed to assure high-quality performance;
  - (d) retaining employees on the basis of the adequacy of their performance and separating employees whose inadequate performance cannot be corrected;



- (e) fair treatment of applicants and employees in all aspects of human resource administration without regard to race, color, religion, sex, national origin, political affiliation, age, or disability, and with proper regard for their privacy and constitutional rights as citizens;
- (f) providing information to employees regarding their political rights and the prohibited practices under the Hatch Act; and
- (g) providing a formal procedure for advancing grievances of employees:
  - (i) without discrimination, coercion, restraint, or reprisal; and
  - (ii) in a manner that is fair, expeditious, and inexpensive for the employee and the agency.
- (2) The career service system described in Subsection (1) may not prescribe a minimum educational requirement for employment, except when a minimum educational qualification is legally required to perform the duties of the position.
- (3) As part of the career service system described in Subsection (1), the department shall:
  - (a) consider comparable experience or ability as equal to education in determining a candidate's satisfaction of minimum qualifications, except when a minimum educational qualification is legally required to perform the duties of the position; and
  - (b) ensure that position descriptions and job postings published by agencies for career service positions are based on the specific skills and competencies required to perform those jobs.
- (4) Within existing resources, the department shall create supporting materials that may be used by a political subdivision that chooses to implement competency-based hiring principles that are the same as or similar to those principles described in Subsections (2) and (3).
- (5) The principles in Subsections (1) through (3) shall govern interpretation and implementation of this chapter.

Amended by Chapter 53, 2021 General Session

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-104 Discriminatory or prohibited employment practices.**

The state, the state's officers, and employees shall be governed by the provisions of Section 34A-5-106 of the Utah Antidiscrimination Act concerning discriminatory or prohibited employment practices.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-105 Division of Human Resource Management created -- Director -- Staff.**

- (1) There is created within the department, the Division of Human Resource Management.
- (2)
  - (a) The division shall be administered by a director appointed by the executive director, with the approval of the governor.
  - (b) The director shall be a person with experience in human resource management and shall be accountable to the executive director for the director's performance in office.
- (3) The director shall advise the governor on human resource matters.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-106 Responsibilities of the director.**

- (1) As used in this section, "miscarriage" means the spontaneous or accidental loss of a fetus, regardless of gestational age or the duration of the pregnancy.

- (2) The director shall have full responsibility and accountability for the administration of the statewide human resource management system.
- (3) Except as provided in Section 63A-17-201, an agency may not perform human resource functions without the consent of the director.
- (4) Statewide human resource management rules made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall take precedence if there is a conflict with agency rules, policies, or practices.
- (5) The division may operate as an internal service fund agency in accordance with Section 63J-1-410 for the human resource functions the division provides.
- (6) The director shall:
  - (a) develop, implement, and administer a statewide program of human resource management that will:
    - (i) aid in the efficient execution of public policy;
    - (ii) foster careers in public service for qualified employees; and
    - (iii) render assistance to state agencies in performing their missions;
  - (b) design and administer the state pay plan;
  - (c) design and administer the state classification system and procedures for determining schedule assignments;
  - (d) design and administer the state recruitment and selection system;
  - (e) administer agency human resource practices and ensure compliance with federal law, state law, and state human resource rules, including equal employment opportunity;
  - (f) consult with agencies on decisions concerning employee corrective action and discipline;
  - (g) maintain central personnel records;
  - (h) perform those functions necessary to implement this chapter unless otherwise assigned or prohibited;
  - (i) perform duties assigned by the governor, executive director, or statute;
  - (j) make rules for human resource management, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
  - (k) establish and maintain a management information system that will furnish the governor, the Legislature, and agencies with current information on authorized positions, payroll, and related matters concerning state human resources;
  - (l) conduct research and planning activities to:
    - (i) determine and prepare for future state human resource needs;
    - (ii) develop methods for improving public human resource management; and
    - (iii) propose needed policy changes to the governor;
  - (m) study the character, causes, and extent of discrimination in state employment and develop plans for its elimination through programs consistent with federal and state laws governing equal employment opportunity in employment;
  - (n) when requested by charter schools or counties, municipalities, and other political subdivisions of the state, provide technical service, training recommendations, or advice on human resource management at a charge determined by the director;
  - (o) establish compensation policies and procedures for early voluntary retirement;
  - (p) confer with the heads of other agencies about human resource policies and procedures;
  - (q) submit an annual report to the executive director, the governor, and the Legislature; and
  - (r) assist with the development of a vacant position report required under Subsection 63J-1-201(2)(b)(vi).
- (7)

- (a) After consultation with the executive director, the governor, and the heads of other agencies, the director shall establish and coordinate statewide training programs, including training described in Subsection (7)(e).
- (b) The programs developed under this Subsection (7) shall have application to more than one agency.
- (c) The division may not establish training programs that train employees to perform highly specialized or technical jobs and tasks.
- (d) The division shall ensure that any training program described in this Subsection (7) complies with Title 63G, Chapter 22, State Training and Certification Requirements.
- (e)
  - (i) As used in this Subsection (7)(e):
    - (A) "Employee" means the same as that term is defined in Section 63A-17-112.
    - (B) "Supervisor" means an individual in a position at an agency, as defined in Section 63A-17-112, that requires the regular supervision and performance evaluation of an employee.
  - (ii) A supervisor shall attend the training:
    - (A) within six months of being promoted or hired to the position of supervisor; and
    - (B) at least annually.
  - (iii) Training attendance and the effective use of training information and principles shall be considered in an evaluation of a supervisor's job performance.
  - (iv) The training shall include:
    - (A) effective employee management and evaluation methods based on the pay for performance management system described in Section 63A-17-112;
    - (B) instruction to improve supervisor and employee communications;
    - (C) best practices for recognizing and retaining high-performing employees;
    - (D) best practices for addressing poor-performing employees; and
    - (E) any other information and principles identified by the division to improve management or organizational effectiveness.
- (8)
  - (a)
    - (i) The division may collect fees for training as authorized by this Subsection (8).
    - (ii) Training funded from General Fund appropriations shall be treated as a separate program within the department budget.
    - (iii) All money received from fees under this section will be accounted for by the department as a separate user driven training program.
    - (iv) The user training program includes the costs of developing, procuring, and presenting training and development programs, and other associated costs for these programs.
  - (b)
    - (i) Funds remaining at the end of the fiscal year in the user training program are nonlapsing.
    - (ii) Each year, as part of the appropriations process, the Legislature shall review the amount of nonlapsing funds remaining at the end of the fiscal year and may, by statute, require the department to lapse a portion of the funds.
- (9) Rules described in Subsection (6)(j) shall provide for at least three work days of paid bereavement leave for an employee:
  - (a) following the end of the employee's pregnancy by way of miscarriage or stillbirth; or
  - (b) following the end of another individual's pregnancy by way of a miscarriage or stillbirth, if:
    - (i) the employee is the individual's spouse or partner;
    - (ii)

- (A) the employee is the individual's former spouse or partner; and
- (B) the employee would have been a biological parent of a child born as a result of the pregnancy;
- (iii) the employee provides documentation to show that the individual intended for the employee to be an adoptive parent, as that term is defined in Section 78B-6-103, of a child born as a result of the pregnancy; or
- (iv) under a valid gestational agreement in accordance with Title 78B, Chapter 15, Part 8, Gestational Agreement, the employee would have been a parent of a child born as a result of the pregnancy.

Amended by Chapter 166, 2022 General Session  
Amended by Chapter 169, 2022 General Session  
Amended by Chapter 177, 2022 General Session  
Amended by Chapter 209, 2022 General Session

**63A-17-107 Services and fees -- Submission to rate committee.**

The director shall, before charging a rate for services provided by the division's internal service fund to an executive branch agency:

- (1) submit the proposed rates and cost analysis to the rate committee established in Section 63A-1-114; and
- (2) obtain the approval of the Legislature as required under Section 63J-1-410.

Amended by Chapter 169, 2022 General Session

**63A-17-108 Severability of provisions -- Compliance with requirements for federally aided programs.**

- (1) If any provision of this chapter or of any regulation or order issued thereunder or the application of any provision of this chapter to any person or circumstance is held invalid, the remainder of this chapter and the application of provision of this chapter or regulation or orders issued under it to persons or circumstances other than those to which it is held invalid shall still be regarded as having the force and effect of law.
- (2) If any part of this chapter is found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, the conflicting part of this chapter shall be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such findings shall not affect the operation of the remainder of this chapter in its application to the agencies concerned.
- (3) Notwithstanding any provisions in this chapter to the contrary, no regulation shall be adopted which would deprive the state or any of its departments or institutions of federal grants or other forms of financial assistance, and the rules and regulations promulgated hereunder shall include standards, provisions, terms, and conditions for personnel engaged in the administration of federally aided programs, which shall, in all respects, comply with the necessary requirements for a qualified human resource system under the standards applicable to personnel engaged in the administration of federally aided programs.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-109 Study of wildland fire related pay plans.**

By no later than June 30, 2021, the division shall complete a comprehensive comparison of federal, state, and municipal wildland fire agencies or departments to recommend whether salary ranges should be adjusted for state employed wildland firefighters.

Enacted by Chapter 97, 2021 General Session

**63A-17-110 State pay plans for DNR peace officers and wildland firefighters.**

(1) As used in this section:

- (a) "DNR peace officer" means an employee of the Department of Natural Resources who is designated as a peace officer by law.
- (b) "Wildland firefighter" means an employee of the Division of Forestry, Fire, and State Lands who is:
  - (i) trained in firefighter techniques; and
  - (ii) assigned to a position of hazardous duty.

(2) The director shall:

- (a) establish a specialized state pay plan for DNR peace officers and wildland firefighters that:
  - (i) meets the requirements of Section 63A-17-307;
  - (ii) distinguishes the salary range for each DNR peace officer and wildland firefighter classification;
  - (iii) includes for each DNR peace officer and wildland firefighter classification:
    - (A) the minimum qualifications; and
    - (B) any training requirements; and
  - (iv) provides standards for:
    - (A) performance evaluation; and
    - (B) promotion; and
- (b) include, in the plan described in Subsection 63A-17-307(5), recommendations on funding and salary increases for DNR peace officers and wildland firefighters.

Amended by Chapter 169, 2022 General Session

Amended by Chapter 274, 2022 General Session

**63A-17-111 Teleworking progress report.**

(1) As used in this section:

- (a) "Mandatory action day" means a day where notice has been issued at least 48 hours in advance by the director of the Division of Air Quality that the concentration of air pollutants measured in a county are predicted to reach or exceed levels of air pollution that are unhealthy for sensitive groups.
- (b) "Special circumstance day" means a day where predicted heavy snowfall or other situations pose a risk to employee safety or employee health as determined by the Governor's Office of Planning and Budget or a designee of the Governor's Office of Planning and Budget.
- (c) "Surge telework eligible" means all employment positions identified as telework eligible and employment positions identified as able to telework temporarily for mandatory action days or special circumstance days.
- (d) "Surge teleworking" means an employee who temporarily teleworks on a mandatory action day or a special circumstance day.
- (e) "Telework" or "Teleworking" means an employee working from home, or from an approved worksite other than the location from which the employee would otherwise work, through the

use of a computer, the Internet, a telephone, or other technology to complete work-related duties and maintain contact with colleagues, clients, or a central office as needed.

- (2)
- (a) The division shall assist each state agency with identifying positions that are surge telework eligible.
  - (b) The division may identify and distribute to each state agency strategies and best practices to increase the use of teleworking by the agency's employees during mandatory action days and special circumstance days.
- (3) The Governor's Office of Planning and Budget or a designee of the Governor's Office of Planning and Budget shall inform each state agency in a timely manner of mandatory action days and special circumstance days.
- (4) On or before October 1 of each year, the division shall provide a written report to the Economic Development and Workforce Services Interim Committee describing:
- (a) the number of employees and the percentage of employees from each agency that are identified as telework eligible and surge telework eligible;
  - (b) except for the initial written report on or before October 1, 2021, the number of employees and the percentage of employees from each agency that have teleworked during mandatory action days and special circumstance days during the previous fiscal year;
  - (c) for each agency that has not met the target goal of 90% of surge telework eligible employees teleworking on mandatory action days or special circumstance days, impediments to achieving the target goals and recommended strategies to achieve the target goals in the future; and
  - (d) for each agency, recommendations for any actions by the Legislature to increase the number and percentage of surge telework eligible employees.

Enacted by Chapter 192, 2021 General Session

**63A-17-112 Pay for performance management system -- Employees paid for performance.**

- (1) As used in this section:
- (a)
    - (i) "Agency" means, except as provided in Subsection (1)(a)(ii), the same as that term is defined in Section 63A-17-102.
    - (ii) "Agency" does not include the State Board of Education, the Office of the State Treasurer, Office of the State Auditor, Office of the State Attorney General, Utah System of Higher Education, the Legislature, the judiciary, or, as defined in Section 63E-1-102, an independent entity.
  - (b)
    - (i) "Employee" means an employee of an agency.
    - (ii) "Employee" does not include an individual in a schedule AB, as described in Section 63A-17-301, position.
  - (c) "Pay for performance" means a plan for incentivizing an employee for meeting or exceeding production or performance goals, in which the plan is well-defined before work begins, eligible work groups are defined, specific goals and targets for the employee are determined, measurement procedures are in place, and specific incentives are provided when goals and targets are met.
  - (d) "Pay for performance management system" means the system described in Subsection (2).

- (2) The division shall establish and, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules for the administration of a pay for performance management system.
- (3) The pay for performance management system shall include:
  - (a) guidelines and criteria for an agency to adopt pay for performance policies and administer pay based on an employee's performance in furtherance of the agency's mission;
  - (b) employee performance ratings;
  - (c) requirements for written employee performance standards and expectations;
  - (d) supervisor verbal and written feedback based on the standards of performance and behavior outlined in an employee's performance plan; and
  - (e) quarterly written evaluation of an employee's performance.
- (4) In consultation with the division, no later than July 1, 2023, each agency shall:
  - (a) adopt pay for performance policies based on the performance management system; and
  - (b) subject to available funds and as necessary, adjust an employee's wage to reflect:
    - (i) subject to Subsection (5), for a classified service employee, the salary range of the position classified plan for the employee's position; and
    - (ii) an increase, decrease, or no change in the employee's wage:
      - (A) commensurate to an employee's performance as reflected by the employee's evaluation conducted in accordance with the pay for performance management system; and
      - (B) in an amount that is in accordance with the guidelines and criteria established for a wage change in the pay for performance management system.
- (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules authorizing a classified service employee to receive a wage that exceeds the salary range of the classified service employee's position classified plan if warranted based on the classified employee's performance rating.

Enacted by Chapter 209, 2022 General Session

## **Part 2 Offices and Facilities**

### **63A-17-201 Division field offices.**

- (1) The director may establish a field office in an agency.
- (2) The director may assign an employee of the division to act as field office staff.
- (3) The director and agency head shall sign an agreement, to be reviewed annually, that specifies:
  - (a) the services to be provided by the division;
  - (b) the use of agency facilities and equipment by the field office;
  - (c) protocols to resolve discrepancies between agency practice and division policy; and
  - (d) any other issue necessary for the proper functioning of the field office.
- (4) Unless otherwise provided for in the field office agreement, the agency shall:
  - (a) assign responsibilities and duties to its employees;
  - (b) conduct performance appraisals;
  - (c) discipline the agency's employees in consultation with the division; and
  - (d) maintain individual personnel records.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-202 Use of facilities -- Field office facilities cost allocation.**

- (1) An agency or a political subdivision of the state shall allow the division to use public buildings under the agency's or the political subdivision's control, and furnish heat, light, and furniture, for any examination, training, hearing, or investigation authorized by this chapter.
- (2) An agency or political subdivision that allows the division to use a public building under Subsection (1) shall pay the cost of the division's use of the public building.

Amended by Chapter 169, 2022 General Session

**Part 3**  
**Classification and Career Service**

**63A-17-301 Career service -- Exempt positions -- Schedules for civil service positions -- Coverage of career service provisions.**

- (1) Except as provided in Subsection (3)(d), the following positions are exempt from the career service provisions of this chapter and are designated under the following schedules:
  - (a) schedule AA includes the governor, members of the Legislature, and all other elected state officers;
  - (b) schedule AB includes appointed executives and board or commission executives enumerated in Section 67-22-2;
  - (c) schedule AC includes all employees and officers in:
    - (i) the office and at the residence of the governor;
    - (ii) the Public Lands Policy Coordinating Office;
    - (iii) the Office of the State Auditor; and
    - (iv) the Office of the State Treasurer;
  - (d) schedule AD includes employees who:
    - (i) are in a confidential relationship to an agency head or commissioner; and
    - (ii) report directly to, and are supervised by, a department head, commissioner, or deputy director of an agency or its equivalent;
  - (e) schedule AE includes each employee of the State Board of Education that the State Board of Education designates as exempt from the career service provisions of this chapter;
  - (f) schedule AG includes employees in the Office of the Attorney General who are under their own career service pay plan under Sections 67-5-7 through 67-5-13;
  - (g) schedule AH includes:
    - (i) teaching staff of all state institutions; and
    - (ii) employees of the Utah Schools for the Deaf and the Blind who are:
      - (A) educational interpreters as classified by the division; or
      - (B) educators as defined by Section 53E-8-102;
  - (h) schedule AN includes employees of the Legislature;
  - (i) schedule AO includes employees of the judiciary;
  - (j) schedule AP includes all judges in the judiciary;
  - (k) schedule AQ includes:
    - (i) members of state and local boards and councils appointed by the governor and governing bodies of agencies;
    - (ii) a water commissioner appointed under Section 73-5-1;



- (iii) other local officials serving in an ex officio capacity; and
  - (iv) officers, faculty, and other employees of state universities and other state institutions of higher education;
  - (l) schedule AR includes employees in positions that involve responsibility:
    - (i) for determining policy;
    - (ii) for determining the way in which a policy is carried out; or
    - (iii) of a type not appropriate for career service, as determined by the agency head with the concurrence of the director;
  - (m) schedule AS includes any other employee:
    - (i) whose appointment is required by statute to be career service exempt;
    - (ii) whose agency is not subject to this chapter; or
    - (iii) whose agency has authority to make rules regarding the performance, compensation, and bonuses for its employees;
  - (n) schedule AT includes employees of the Division of Technology Services, designated as executive/professional positions by the director of the Division of Technology Services with the concurrence of the director of the division;
  - (o) schedule AU includes patients and inmates employed in state institutions;
  - (p) employees of the Department of Workforce Services, designated as schedule AW:
    - (i) who are temporary employees that are federally funded and are required to work under federally qualified merit principles as certified by the director; or
    - (ii) for whom substantially all of their work is repetitive, measurable, or transaction based, and who voluntarily apply for and are accepted by the Department of Workforce Services to work in a pay for performance program designed by the Department of Workforce Services with the concurrence of the director of the division;
  - (q) subject to Subsection (6), schedule AX includes employees in positions that:
    - (i) require the regular supervision and performance evaluation of one or more other employees; and
    - (ii) are not designated exempt from career service under any other schedule described in this Subsection (1); and
  - (r) for employees in positions that are temporary, seasonal, time limited, funding limited, or variable hour in nature, under schedule codes and parameters established by the division by administrative rule.
- (2) The civil service shall consist of two schedules as follows:
- (a)
    - (i) Schedule A is the schedule consisting of positions under Subsection (1).
    - (ii) Removal from any appointive position under schedule A, unless otherwise regulated by statute, is at the pleasure of the appointing officers without regard to tenure.
  - (b) Schedule B is the competitive career service schedule, consisting of:
    - (i) all positions filled through competitive selection procedures as defined by the director; or
    - (ii) positions filled through a division approved on-the-job examination intended to appoint a qualified person with a disability, or a veteran in accordance with Title 71A, Chapter 2, Veterans Preference.
- (3)
- (a) The director, after consultation with the heads of concerned executive branch departments and agencies and with the approval of the governor, shall allocate positions to the appropriate schedules under this section.
  - (b) Agency heads shall make requests and obtain approval from the director before changing the schedule assignment and tenure rights of any position.

- (c) Unless the director's decision is reversed by the governor, when the director denies an agency's request, the director's decision is final.
- (d)
  - (i) An agency may file with the division a request to reschedule a position that would otherwise be scheduled as a schedule A position.
  - (ii) The division shall review a request filed under Subsection (3)(d)(i) and approve the request only if the exception is necessary to conform to a requirement imposed as a condition precedent to receipt of federal funds or grant of a tax benefit under federal law.
- (4)
  - (a) Compensation for employees of the Legislature shall be established by the directors of the legislative offices in accordance with Section 36-12-7.
  - (b) Compensation for employees of the judiciary shall be established by the state court administrator in accordance with Section 78A-2-107.
  - (c) Compensation for officers, faculty, and other employees of state universities and institutions of higher education shall be established as provided in Title 53B, Chapter 1, Governance, Powers, Rights, and Responsibilities, and Title 53B, Chapter 2, Institutions of Higher Education.
  - (d) Unless otherwise provided by law, compensation for all other schedule A employees shall be established by their appointing authorities, within ranges approved by, and after consultation with the director.
- (5) An employee who is in a position designated schedule AC and who holds career service status on June 30, 2010, shall retain the career service status if the employee:
  - (a) remains in the position that the employee is in on June 30, 2010; and
  - (b) does not elect to convert to career service exempt status in accordance with a rule made by the division.
- (6)
  - (a) An employee who is hired for a schedule AX position on or after July 1, 2022, is exempt from career service status.
  - (b) An employee who before July 1, 2022, is a career service employee employed in a schedule B position that is rescheduled to a schedule AX position on July 1, 2022, shall maintain the employee's career service status for the duration of the employee's employment in the same position unless the employee voluntarily converts to career service exempt status before July 1, 2023.
  - (c)
    - (i) Subject to Subsection (6)(c)(ii), an employee is exempt from career service status if:
      - (A) before July 1, 2022, the employee was a probationary employee in a schedule B position and had not completed the probationary period; and
      - (B) on July 1, 2022, the schedule B position in which the probationary employee is employed is rescheduled as a scheduled AX position.
    - (ii) An employee described in Subsection (6)(c)(i):
      - (A) is not a probationary employee on or after July 1, 2022; and
      - (B) is exempt from career service status on and after July 1, 2022, unless the employee changes employment to a schedule B position.
  - (d) The division shall disseminate to each employee described in Subsection (6)(b) information on financial and other incentives for voluntary conversion to career-service exempt status.
  - (e) An agency, as defined in Section 63A-17-112, may adopt a policy, created in consultation with the division, for agency review of recommendations that schedule AX employees be suspended, demoted, or dismissed from employment.

Amended by Chapter 209, 2022 General Session

**63A-17-302 Implementation of exempt status for Schedule AD and AR employees.**

- (1) As used in this section, "appointee" means:
  - (a) a deputy director;
  - (b) a division director;
  - (c) any assistant directors and administrative assistants who report directly to a department head, deputy director, or their equivalent; and
  - (d) any other person whose appointment is required by law to be approved by the governor.
- (2) After the effective date of this chapter, any new appointee is a merit exempt employee.
- (3) Notwithstanding the requirements of this chapter, any appointee who is currently a nonexempt employee does not lose that nonexempt status because of this chapter.
- (4) The division shall develop financial and other incentives to encourage appointees who are nonexempt to voluntarily convert to merit exempt status.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-304 Promotion -- Reclassification -- Market adjustment.**

- (1)
  - (a) If an employee is promoted or the employee's position is reclassified to a higher salary range maximum, the agency shall place the employee within the new range of the position.
  - (b) An agency may not set an employee's salary:
    - (i) higher than the maximum in the new salary range; or
    - (ii) lower than the minimum in the new salary range of the position.
- (2) An agency shall adjust the salary range for an employee whose salary range is approved by the Legislature for a market comparability adjustment consistent with Subsection 63A-17-307(5)(b)
  - (i):
    - (a) at the beginning of the next fiscal year; and
    - (b) consistent with appropriations made by the Legislature.
- (3) Division-initiated revisions in the state classification system that result in consolidation or reduction of class titles or broadening of pay ranges:
  - (a) may not be regarded as a reclassification of the position or promotion of the employee; and
  - (b) are exempt from the provisions of Subsection (1).

Amended by Chapter 169, 2022 General Session

**63A-17-305 Appointments to Schedule B positions -- Examinations -- Hiring lists -- Probationary service -- Dismissal.**

- (1) Each appointment to a position under Schedule B shall be made from hiring lists of applicants who have been selected by competitive procedures as defined by the director.
- (2) The director shall publicly announce information regarding career service positions:
  - (a) for periods of time to be determined by the director; and
  - (b) in a manner designed to attract the highest number of qualified applicants.
- (3) The director shall make rules establishing standards for the development, approval, and implementation of examining processes, including establishing a department approved on the job examination to appoint a qualified person with a disability.

- (4) Applicants for employment to Schedule B positions shall be eligible for appointment based upon rules established by the director.
- (5)
  - (a) The agency head shall make appointments to fill vacancies from hiring lists for probationary periods as defined by rule.
  - (b) The director shall make rules establishing probationary periods.
- (6) A person serving a probationary period may not use the grievance procedures provided in this chapter and in Title 67, Chapter 19a, Grievance Procedures, and may be dismissed at any time by the appointing officer without hearing or appeal.
- (7) Career service status shall be granted upon the successful completion of the probationary period.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-306 Dismissals and demotions -- Grounds -- Disciplinary action -- Procedure -- Reductions in force.**

- (1) A career service employee may be dismissed or demoted:
  - (a) to advance the good of the public service; or
  - (b) for just causes, including inefficiency, incompetency, failure to maintain skills or adequate performance levels, insubordination, disloyalty to the orders of a superior, misfeasance, malfeasance, or nonfeasance in office.
- (2) An employee may not be dismissed because of race, sex, age, disability, national origin, religion, political affiliation, or other nonmerit factor including the exercise of rights under this chapter.
- (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director shall make rules governing the procedural and documentary requirements of disciplinary dismissals and demotions.
- (4) If an agency head finds that a career service employee is charged with aggravated misconduct or that retention of a career service employee would endanger the peace and safety of others or pose a grave threat to the public interest, the employee may be suspended pending the administrative appeal to the department head as provided in Subsection (5).
- (5)
  - (a) A career service employee may not be demoted or dismissed unless the department head or designated representative has complied with this subsection.
  - (b) The department head or designated representative notifies the employee in writing of the reasons for the dismissal or demotion.
  - (c) The employee has no less than five working days to reply and have the reply considered by the department head.
  - (d) The employee has an opportunity to be heard by the department head or designated representative.
  - (e) Following the hearing, the employee may be dismissed or demoted if the department head finds adequate cause or reason.
- (6)
  - (a) Reductions in force required by inadequate funds, change of workload, or lack of work are governed by retention points established by the director.
  - (b) Under those circumstances:
    - (i) The agency head shall designate the category of work to be eliminated, subject to review by the director.

- (ii) Temporary and probationary employees shall be separated before any career service employee.
- (iii)
  - (A) When more than one career service employee is affected, the employees shall be separated in the order of their retention points, the employee with the lowest points to be discharged first.
  - (B) Retention points for each career service employee shall be computed according to rules established by the director, allowing appropriate consideration for proficiency and seniority in state government, including any active duty military service fulfilled subsequent to original state appointment.
- (c)
  - (i) A career service employee who is separated in a reduction in force under this section shall be given preferential consideration when applying for a career service position.
  - (ii) Preferential consideration under Subsection (6)(c)(i) applies only until the former career service employee accepts a career service position.
  - (iii) The director shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, concerning the manner of granting preferential consideration under Subsection (6)(c)(i).
- (d)
  - (i) An employee separated due to a reduction in force may appeal to the department head for an administrative review.
  - (ii) The notice of appeal must be submitted within 20 working days after the employee's receipt of written notification of separation.
  - (iii) The employee may appeal the decision of the department head according to the grievance and appeals procedure of this chapter and Title 67, Chapter 19a, Grievance Procedures.

Amended by Chapter 169, 2022 General Session

**63A-17-307 State pay plans -- Applicability of section -- Exemptions -- Duties of director.**

- (1)
  - (a) This section, and the rules made by the division under this section, apply to each career and noncareer employee not specifically exempted under Subsection (2).
  - (b) If not exempted under Subsection (2), an employee is considered to be in classified service.
- (2) The following employees are exempt from this section:
  - (a) members of the Legislature and legislative employees;
  - (b) members of the judiciary and judicial employees;
  - (c) elected members of the executive branch and employees designated as schedule AC as provided under Subsection 63A-17-301(1)(c);
  - (d) employees of the State Board of Education;
  - (e) officers, faculty, and other employees of state institutions of higher education;
  - (f) employees in a position that is specified by statute to be exempt from this Subsection (2);
  - (g) employees in the Office of the Attorney General;
  - (h) department heads and other persons appointed by the governor under statute;
  - (i) schedule AS employees as provided under Subsection 63A-17-301(1)(m);
  - (j) department deputy directors, division directors, and other employees designated as schedule AD as provided under Subsection 63A-17-301(1)(d);
  - (k) employees that determine and execute policy designated as schedule AR as provided under Subsection 63A-17-301(1)(l);

- (l) teaching staff, educational interpreters, and educators designated as schedule AH as provided under Subsection 63A-17-301(1)(g);
  - (m) temporary employees described in Subsection 63A-17-301(1)(r);
  - (n) patients and inmates designated as schedule AU as provided under Subsection 63A-17-301(1)(o) who are employed by state institutions; and
  - (o) members of state and local boards and councils and other employees designated as schedule AQ as provided under Subsection 63A-17-301(1)(k).
- (3)
- (a) The director shall prepare, maintain, and revise a position classification plan for each employee position not exempted under Subsection (2) to provide equal pay for equal work.
  - (b) Classification of positions shall be based upon similarity of duties performed and responsibilities assumed, so that the same job requirements and the same salary range, subject to Section 63A-17-112, may be applied equitably to each position in the same class.
  - (c) The director shall allocate or reallocate the position of each employee in classified service to one of the classes in the classification plan.
  - (d)
    - (i) The division shall conduct periodic studies and interviews to provide that the classification plan remains reasonably current and reflects the duties and responsibilities assigned to and performed by employees.
    - (ii) The director shall determine the need for studies and interviews after considering factors such as changes in duties and responsibilities of positions or agency reorganizations.
- (4)
- (a) With the approval of the executive director and the governor, the director shall develop and adopt pay plans for each position in classified service.
  - (b) The director shall design each pay plan to achieve, to the degree that funds permit, comparability of state salary ranges to the market using data obtained from private enterprise and other public employment for similar work.
  - (c) The director shall adhere to the following in developing each pay plan:
    - (i) each pay plan shall consist of sufficient salary ranges to:
      - (A) permit adequate salary differential among the various classes of positions in the classification plan; and
      - (B) reflect the normal growth and productivity potential of employees in that class.
    - (ii) The director shall issue rules for the administration of pay plans.
  - (d) The establishing of a salary range is a nondelegable activity and is not appealable under the grievance procedures of Part 6, Grievance Provisions, Title 67, Chapter 19a, Grievance Procedures, or otherwise.
  - (e) The director shall make rules, accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, providing for:
    - (i) agency approved salary adjustments within approved salary ranges, including an administrative salary adjustment; and
    - (ii) structure adjustments that modify salary ranges, including a cost of living adjustment or market comparability adjustment.
- (5)
- (a) On or before October 31 of each year, the director shall submit an annual compensation plan to the executive director and the governor for consideration in the executive budget and to the State Employee Benefits Advisory Commission created in Section 63C-31-102.
  - (b) The plan described in Subsection (5)(a) may include recommendations, including:

- (i) salary increases that generally affect employees, including a general increase or merit increase;
  - (ii) salary increases that address compensation issues unique to an agency or occupation;
  - (iii) structure adjustments, including a cost of living adjustment or market comparability adjustment; or
  - (iv) changes to employee benefits.
- (c)
- (i)
    - (A) Subject to Subsection (5)(c)(i)(B) or (C), the director shall incorporate the results of a salary survey of a reasonable cross section of comparable positions in private and public employment in the state into the annual compensation plan.
    - (B) The salary survey for a law enforcement officer, as defined in Section 53-13-103, a correctional officer, as defined in Section 53-13-104, or a dispatcher, as defined in Section 53-6-102, shall at minimum include the three largest political subdivisions in the state that employ, respectively, comparable positions.
    - (C) The salary survey for an examiner or supervisor described in Title 7, Chapter 1, Part 2, Department of Financial Institutions, shall at minimum include the Federal Deposit Insurance Corporation, Federal Reserve, and National Credit Union Administration.
  - (ii) The director may cooperate with or participate in any survey conducted by other public and private employers.
  - (iii) The director shall obtain information for the purpose of constructing the survey from the Division of Workforce Information and Payment Services and shall include employer name, number of persons employed by the employer, employer contact information and job titles, county code, and salary if available.
  - (iv) The division shall acquire and protect the needed records in compliance with the provisions of Section 35A-4-312.
- (d) The director may incorporate any other relevant information in the plan described in Subsection (5)(a), including information on staff turnover, recruitment data, or external market trends.
- (e) The director shall:
- (i) establish criteria to assure the adequacy and accuracy of data used to make recommendations described in this Subsection (5); and
  - (ii) when preparing recommendations use accepted methodologies and techniques similar to and consistent with those used in the private sector.
- (f)
- (i) Upon request and subject to Subsection (5)(f)(ii), the division shall make available foundational information used by the division or director in the drafting of a plan described in Subsection (5)(a), including:
    - (A) demographic and labor market information;
    - (B) information on employee turnover;
    - (C) salary information;
    - (D) information on recruitment; and
    - (E) geographic data.
  - (ii) The division may not provide under Subsection (5)(f)(i) information or other data that is proprietary or otherwise protected under the terms of a contract or by law.
- (g) The governor shall:

- (i) consider salary and structure adjustments recommended under Subsection (5)(b) in preparing the executive budget and shall recommend the method of distributing the adjustments;
  - (ii) submit compensation recommendations to the Legislature; and
  - (iii) support the recommendation with schedules indicating the cost to individual departments and the source of funds.
- (h) If funding is approved by the Legislature in a general appropriations act, the adjustments take effect on the July 1 following the enactment unless otherwise indicated.
- (6)
- (a) The director shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the granting of incentive awards, including awards for cost saving actions, awards for commendable actions by an employee, or a market-based award to attract or retain employees.
  - (b) An agency may not grant a market-based award unless the award is previously approved by the division.
  - (c) In accordance with Subsection (6)(b), an agency requesting the division's approval of a market-based award shall submit a request and documentation, subject to Subsection (6)(d), to the division.
  - (d) In the documentation required in Subsection (6)(c), the requesting agency shall identify for the division:
    - (i) any benefit the market-based award would provide for the agency, including:
      - (A) budgetary advantages; or
      - (B) recruitment advantages;
    - (ii) a mission critical need to attract or retain unique or hard to find skills in the market; or
    - (iii) any other advantage the agency would gain through the utilization of a market-based award.
- (7)
- (a) The director shall regularly evaluate the total compensation program of state employees in the classified service.
  - (b) The division shall determine if employee benefits are comparable to those offered by other private and public employers using information from:
    - (i) a study conducted by a third-party consultant; or
    - (ii) the most recent edition of a nationally recognized benefits survey.

Amended by Chapter 489, 2023 General Session

## **Part 4 Payroll**

### **63A-17-401 Examination of payrolls and certification of employee eligibility by the director.**

- (1) The director may examine payrolls at any time to determine conformity with this chapter and administrative rules.
- (2) No new employee shall be hired in a position covered by this chapter, and no employee shall be changed in pay, title or status, nor shall any employee be paid unless certified by the director as eligible under the provisions of or rules made pursuant to this chapter.



Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-402 Division provides payroll services to executive branch agencies -- Report.**

(1) As used in this section:

(a)

(i) "Executive branch entity" means a department, division, agency, board, or office within the executive branch of state government that employs a person who is paid through the central payroll system developed by the Division of Finance as of December 31, 2011.

(ii) "Executive branch entity" does not include:

- (A) the Office of the Attorney General;
- (B) the Office of the State Treasurer;
- (C) the Office of the State Auditor;
- (D) the Department of Transportation;
- (E) the Division of Technology Services;
- (F) the Department of Public Safety;
- (G) the Department of Natural Resources; or
- (H) the Utah Schools for the Deaf and the Blind.

(b)

(i) "Payroll services" means using the central payroll system as directed by the Division of Finance to:

- (A) enter and validate payroll reimbursements, which include reimbursements for mileage, a service award, and other wage types;
- (B) calculate, process, and validate a retirement;
- (C) enter a leave adjustment; and
- (D) certify payroll by ensuring an entry complies with a rule or policy adopted by the department or the Division of Finance.

(ii) "Payroll services" does not mean:

- (A) a function related to payroll that is performed by an employee of the Division of Finance;
- (B) a function related to payroll that is performed by an executive branch agency on behalf of a person who is not an employee of the executive branch agency;
- (C) the entry of time worked by an executive branch agency employee into the central payroll system; or
- (D) approval or verification by a supervisor or designee of the entry of time worked.

(2) The division shall provide payroll services to all executive branch entities.

(3) After September 19, 2012, an executive branch entity, other than the division or the Division of Finance, may not create a full-time equivalent position or part-time position, or request an appropriation to fund a full-time equivalent position or part-time position for the purpose of providing payroll services to the entity.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-403 Employee cost disclosure.**

The Division of Finance shall, at least annually, plainly disclose to all state employees the costs of compensation and benefits that are paid by the state in dollar figures.

Renumbered and Amended by Chapter 344, 2021 General Session

## Part 5 Hours and Leave

### **63A-17-501 Definitions.**

As used in this part:

- (1) "Continuing medical and life insurance benefits" means the state provided policy of medical insurance and the state provided portion of a policy of life insurance, each offered at the same:
  - (a) benefit level and the same proportion of state/member participation in the total premium costs as an active member as defined in Section 49-11-102; and
  - (b) coverage level for a member, two person, or family policy as provided to the member at the time of retirement.
- (2) "Converted sick leave" means leave that has been converted from unused sick leave in accordance with Section 63A-17-506 which may be used by an employee in the same manner as:
  - (a) annual leave;
  - (b) sick leave; or
  - (c) unused accumulated sick leave after the employee's retirement for the purchase of continuing medical and life insurance benefits under Sections 63A-17-507, 63A-17-508, and 63A-17-804.

Enacted by Chapter 344, 2021 General Session

### **63A-17-502 Overtime policies for state employees.**

- (1) As used in this section:
  - (a) "Accrued overtime hours" means:
    - (i) for nonexempt employees, overtime hours earned during a fiscal year that, at the end of the fiscal year, have not been paid and have not been taken as time off by the nonexempt state employee who accrued them; and
    - (ii) for exempt employees, overtime hours earned during an overtime year.
  - (b) "Appointed official" means:
    - (i) each department executive director and deputy director, each division director, and each member of a board or commission; and
    - (ii) any other person employed by a department who is appointed by, or whose appointment is required by law to be approved by, the governor and who:
      - (A) is paid a salary by the state; and
      - (B) who exercises managerial, policy-making, or advisory responsibility.
  - (c) "Department" means the Department of Government Operations, the Department of Corrections, the Department of Financial Institutions, the Department of Alcoholic Beverage Services, the Insurance Department, the Public Service Commission, the Labor Commission, the Department of Agriculture and Food, the Department of Human Services, the Department of Natural Resources, the Department of Transportation, the Department of Commerce, the Department of Workforce Services, the State Tax Commission, the Department of Cultural and Community Engagement, the Department of Health, the National Guard, the Department of Environmental Quality, the Department of Public Safety, the Commission on Criminal and Juvenile Justice, all merit employees except attorneys in the Office of the Attorney General, merit employees in the Office of the State Treasurer, merit employees in the Office of the

State Auditor, Department of Veterans and Military Affairs, and the Board of Pardons and Parole.

- (d) "Elected official" means any person who is an employee of the state because the person was elected by the registered voters of Utah to a position in state government.
  - (e) "Exempt employee" means a state employee who is exempt as defined by the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.
  - (f) "FLSA" means the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.
  - (g) "FLSA agreement" means the agreement authorized by the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq., by which a nonexempt employee elects the form of compensation the nonexempt employee will receive for overtime.
  - (h) "Nonexempt employee" means a state employee who is nonexempt as defined by the division applying FLSA requirements.
  - (i) "Overtime" means actual time worked in excess of the employee's defined work period.
  - (j) "Overtime year" means the year determined by a department under Subsection (4)(b) at the end of which an exempt employee's accrued overtime lapses.
  - (k) "State employee" means every person employed by a department who is not:
    - (i) an appointed official;
    - (ii) an elected official; or
    - (iii) a member of a board or commission who is paid only for per diem or travel expenses.
  - (l) "Uniform annual date" means the date when an exempt employee's accrued overtime lapses.
  - (m) "Work period" means:
    - (i) for all nonexempt employees, except law enforcement and hospital employees, a consecutive seven day 24 hour work period of 40 hours;
    - (ii) for all exempt employees, a 14 day, 80 hour payroll cycle; and
    - (iii) for nonexempt law enforcement and hospital employees, the period established by each department by rule for those employees according to the requirements of the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.
- (2) Each department shall compensate each state employee who works overtime by complying with the requirements of this section.
- (3)
- (a) Each department shall negotiate and obtain a signed FLSA agreement from each nonexempt employee.
  - (b) In the FLSA agreement, the nonexempt employee shall elect either to be compensated for overtime by:
    - (i) taking time off work at the rate of one and one-half hour off for each overtime hour worked; or
    - (ii) being paid for the overtime worked at the rate of one and one-half times the rate per hour that the state employee receives for nonovertime work.
  - (c) Any nonexempt employee who elects to take time off under this Subsection (3) shall be paid for any overtime worked in excess of the cap established by the division.
  - (d) Before working any overtime, each nonexempt employee shall obtain authorization to work overtime from the employee's immediate supervisor.
  - (e) Each department shall:
    - (i) for employees who elect to be compensated with time off for overtime, allow overtime earned during a fiscal year to be accumulated; and
    - (ii) for employees who elect to be paid for overtime worked, pay them for overtime worked in the paycheck for the pay period in which the employee worked the overtime.

- (f) If a department pays a nonexempt employee for overtime, that department shall charge that payment to that department's budget.
  - (g) At the end of each fiscal year, the Division of Finance shall total all the accrued overtime hours for nonexempt employees and charge that total against the appropriate fund or subfund.
- (4)
- (a)
    - (i) Except as provided in Subsection (4)(a)(ii), each department shall compensate exempt employees who work overtime by granting them time off at the rate of one hour off for each hour of overtime worked.
    - (ii) The director of the division may grant limited exceptions to this requirement, where work circumstances dictate, by authorizing a department to pay employees for overtime worked at the rate per hour that the employee receives for nonovertime work, if that department has funds available.
  - (b)
    - (i) Each department shall:
      - (A) establish in its written human resource policies a uniform annual date for each division that is at the end of any pay period; and
      - (B) communicate the uniform annual date to its employees.
    - (ii) If any department fails to establish a uniform annual date as required by this Subsection (4), the director of the division, in conjunction with the director of the Division of Finance, shall establish the date for that department.
  - (c)
    - (i) Any overtime earned under this Subsection (4) is not an entitlement, is not a benefit, and is not a vested right.
    - (ii) A court may not construe the overtime for exempt employees authorized by this Subsection (4) as an entitlement, a benefit, or as a vested right.
  - (d) At the end of the overtime year, upon transfer to another department at any time, and upon termination, retirement, or other situations where the employee will not return to work before the end of the overtime year:
    - (i) any of an exempt employee's overtime that is more than the maximum established by division rule lapses; and
    - (ii) unless authorized by the director of the division under Subsection (4)(a)(ii), a department may not compensate the exempt employee for that lapsed overtime by paying the employee for the overtime or by granting the employee time off for the lapsed overtime.
  - (e) Before working any overtime, each exempt employee shall obtain authorization to work overtime from the exempt employee's immediate supervisor.
  - (f) If a department pays an exempt employee for overtime under authorization from the director of the division, that department shall charge that payment to that department's budget in the pay period earned.
- (5) The division shall:
- (a) ensure that the provisions of the FLSA and this section are implemented throughout state government;
  - (b) determine, for each state employee, whether that employee is exempt, nonexempt, law enforcement, or has some other status under the FLSA;
  - (c) in coordination with modifications to the systems operated by the Division of Finance, make rules:
    - (i) establishing procedures for recording overtime worked that comply with FLSA requirements;

- (ii) establishing requirements governing overtime worked while traveling and procedures for recording that overtime that comply with FLSA requirements;
  - (iii) establishing requirements governing overtime worked if the employee is "on call" and procedures for recording that overtime that comply with FLSA requirements;
  - (iv) establishing requirements governing overtime worked while an employee is being trained and procedures for recording that overtime that comply with FLSA requirements;
  - (v) subject to the FLSA, establishing the maximum number of hours that a nonexempt employee may accrue before a department is required to pay the employee for the overtime worked;
  - (vi) subject to the FLSA, establishing the maximum number of overtime hours for an exempt employee that do not lapse; and
  - (vii) establishing procedures for adjudicating appeals of any FLSA determinations made by the division as required by this section;
- (d) monitor departments for compliance with the FLSA; and
- (e) recommend to the Legislature and the governor any statutory changes necessary because of federal government action.
- (6)
- (a) In coordination with the procedures for recording overtime worked established in rule by the division, the Division of Finance shall modify its payroll and human resource systems to accommodate those procedures.
  - (b) Notwithstanding the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, Section 63A-17-602, and Section 67-19a-301, any employee who is aggrieved by the FLSA designation made by the division as required by this section may appeal that determination to the director of the division by following the procedures and requirements established in division rule.
  - (c) Upon receipt of an appeal under this section, the director shall notify the executive director of the employee's department that the appeal has been filed.
  - (d) If the employee is aggrieved by the decision of the director, the employee shall appeal that determination to the Department of Labor, Wage and Hour Division, according to the procedures and requirements of federal law.

Amended by Chapter 447, 2022 General Session

**63A-17-503 Accumulated annual leave -- Conversion to deferred compensation plan.**

- (1) The division shall implement a program whereby an employee may, upon termination of employment or retirement, elect to convert any unused annual leave into any of the employee's designated deferred compensation accounts that:
  - (a) are sponsored by the Utah State Retirement Board; and
  - (b) are qualified under Section 401(k) or Section 457 of the Internal Revenue Code.
- (2) Any annual leave converted under Subsection (1) shall be converted into the employee's deferred compensation account at the employee's pay rate at the time of termination or retirement.
- (3) No employee may convert hours of accrued annual leave to the extent that any hours so converted would exceed the maximum amount authorized by the Internal Revenue Code for each calendar year.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-504 Accumulated annual leave -- Annual conversion to deferred compensation plan.**

- (1) If the Legislature in an annual appropriations act with accompanying intent language specifically authorizes and fully funds the estimated costs of this use, the division shall implement a program that allows an employee, in the approved calendar year, to elect to convert up to 20 hours of annual leave, in whole hour increments not to exceed \$250 in value, into any of the employee's designated deferred compensation accounts that:
  - (a) are sponsored by the Utah State Retirement Board; and
  - (b) are qualified under Section 401(k) or Section 457 of the Internal Revenue Code.
- (2) Any annual leave converted under Subsection (1) shall be:
  - (a) converted into the employee's deferred compensation account at the employee's pay rate at the time of conversion; and
  - (b) calculated in the last pay period of the leave year as determined by the Division of Finance.
- (3) An employee may not convert hours of accrued annual leave to the extent that any hours converted would:
  - (a) exceed the maximum amount authorized by the Internal Revenue Code for the calendar year; or
  - (b) cause the employee's balance of accumulated annual leave to drop below the maximum accrual limit provided by rule.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-505 Sick leave -- Definitions -- Unused sick days retirement programs -- Rulemaking.**

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director shall make rules:
  - (a) for the procedures to implement the provisions of this section through Section 63A-17-508; and
  - (b) to establish the maximum number of hours of converted sick leave an employee may accrue.
- (2) The Division of Finance shall develop and maintain a system of accounting for employee sick leave and converted sick leave as necessary to implement the provisions of this section through Section 63A-17-508.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-506 Converted sick leave.**

Converted sick leave hours that are not used prior to an employee's retirement date shall be used under the:

- (1) Unused Sick Leave Retirement Option Program I under Section 63A-17-507 if earned prior to January 1, 2006, unless the transfer is made under Subsection 63A-17-508(1)(c); or
- (2) Unused Sick Leave Retirement Option Program II under Section 63A-17-508 if earned on or after January 1, 2006.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-507 Unused Sick Leave Retirement Option Program I -- Creation -- Payout upon eligibility for allowance -- Continuing medical and life insurance benefits after retirement.**

- (1)
  - (a) There is created the "Unused Sick Leave Retirement Option Program I."

- (b) An agency may offer the Unused Sick Leave Retirement Option Program I to an employee who is eligible to receive a retirement allowance in accordance with Title 49, Utah State Retirement and Insurance Benefit Act.
- (2) The Unused Sick Leave Retirement Option Program I provides that upon becoming eligible to receive a retirement allowance an employee who was employed by the state prior to January 1, 2006:
  - (a) receives a contribution under Subsection (3) for 25% of the employee's unused accumulated sick leave accrued prior to January 1, 2006, at the employee's rate of pay at the time of retirement; and
  - (b) may purchase additional continuing medical and life insurance benefits in accordance with Subsection (4).
- (3)
  - (a) Subject to federal requirements and limitations, the contribution under Subsection (2)(a) shall be transferred directly to the employee's defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which is sponsored by the Utah State Retirement Board.
  - (b) If the amount calculated under Subsection (2)(a) exceeds the federal contribution limitations, the employee's unused accumulated sick leave hours representing the excess shall be used for the purchase of continuing medical and life insurance benefits under Subsection (4).
- (4)
  - (a) An employee may purchase continuing medical and life insurance benefits, at the rate of one month's coverage per policy for eight hours of unused sick leave remaining after the contribution of unused sick leave under Subsection (2)(a).
  - (b) The medical coverage level for member, two person, or family coverage that is provided to the member at the time of retirement is the maximum coverage level available to the member under this program.
  - (c) The purchase of continuing medical and life insurance benefits at the rate provided under Subsection (4)(a) may be used by the employee to extend coverage:
    - (i) until the employee reaches the age of eligibility for Medicare; or
    - (ii) if the employee has reached the age of eligibility for Medicare, continuing medical benefits for the employee's spouse may be purchased until the employee's spouse reaches the age of eligibility for Medicare.
  - (d) An employee and the employee's spouse who are or who later become eligible for Medicare may purchase Medicare supplemental insurance at the rate of one month's coverage for eight hours of the employee's unused sick leave per person.
- (5)
  - (a) The continuing medical and life insurance benefits purchased by an employee under Subsection (4):
    - (i) may not be suspended or deferred for future use; and
    - (ii) continues in effect until exhausted.
  - (b) An employer participating in the Program I benefits under this section may not provide medical or life insurance benefits to a person who is:
    - (i) reemployed after retirement; and
    - (ii) receiving benefits under this section.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-508 Unused Sick Leave Retirement Program II -- Creation -- Remuneration upon eligibility for allowance -- Medical expense account after retirement.**

- (1)
  - (a) There is created the "Unused Sick Leave Retirement Program II."
  - (b) An agency shall offer the Unused Sick Leave Retirement Option Program II to an employee who is eligible to receive a retirement allowance in accordance with Title 49, Utah State Retirement and Insurance Benefit Act.
  - (c) An employee who is participating in the Unused Sick Leave Retirement Program I under Section 63A-17-507 may make a one-time and irrevocable election to transfer all unused sick leave hours which shall include all converted sick leave hours under Section 63A-17-506 for use under the Unused Sick Leave Retirement Program II under this section.
- (2)
  - (a) The Unused Sick Leave Retirement Program II provides that upon becoming eligible to receive a retirement allowance an employee employed by the state between January 1, 2006, and January 3, 2014, shall receive remuneration for the employee's unused accumulated sick leave and converted sick leave accrued between January 1, 2006, and January 3, 2014, in accordance with this section as follows:
    - (i) subject to federal requirements and limitations, a contribution at the employee's rate of pay at the time of retirement for 25% of the employee's unused accumulated sick leave and converted sick leave shall be transferred directly to the employee's defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which is sponsored by the Utah State Retirement Board; and
    - (ii) participation in a benefit plan that provides for reimbursement for medical expenses using money deposited at the employee's rate of pay at the time of retirement from remaining unused accumulated sick leave and converted sick leave balances.
  - (b) If the amount calculated under Subsection (2)(a)(i) exceeds the federal contribution limitations, the amount representing the excess shall be deposited under Subsection (2)(a)(ii).
  - (c) An employee's rate of pay at the time of retirement for purposes of Subsection (2)(a)(ii) may not be less than the average rate of pay of state employees who retired in the same retirement system under Title 49, Utah State Retirement and Insurance Benefit Act, during the previous calendar year.
- (3) The Utah State Retirement Office shall develop and maintain a program to provide a benefit plan that provides for reimbursement for medical expenses under Subsection (2)(a)(ii) with money deposited under Subsection (2)(a)(ii).

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-509 Organ donor leave.**

- (1) An employee who serves as a bone marrow donor shall be granted a paid leave of absence of up to seven days that are necessary for the donation and recovery from the donation.
- (2) An employee who serves as a donor of a human organ shall be granted a paid leave of absence of up to 30 days that are necessary for the donation and recovery from the donation.
- (3) In recognition of National Donate Life Month, 2015, created by Proclamation No. 9248, 80 F.R. 18511 (April 1, 2015), the department shall distribute an electronic message to each employee during the month of April publicizing the leave offered under this section.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-510 Annual leave -- Definitions -- Previously accrued hours -- Recognition of liability.**

- (1) As used in this section:



- (a)
  - (i) "Annual leave II" means leave hours an employing agency provides to an employee, beginning on the change date established in Subsection (2), as time off from work for personal use without affecting the employee's pay.
  - (ii) "Annual leave II" does not include:
    - (A) legal holidays under Section 63G-1-301;
    - (B) time off as compensation for actual time worked in excess of an employee's defined work period;
    - (C) sick leave;
    - (D) paid or unpaid administrative leave; or
    - (E) other paid or unpaid leave from work provided by state statute, administrative rule, or by federal law or regulation.
  - (b) "Change date" means the date established by the Division of Finance under Subsection (2) when annual leave II begins for a state agency.
- (2) In accordance with the Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Division of Finance shall establish a date that is no later than January 2, 2016, when a state agency shall offer annual leave II in lieu of annual leave to an employee who is eligible to receive paid leave.
- (3) An employing agency shall allow an employee who has an unused balance of accrued annual leave before the change date, to use the annual leave under the same rules that applied to the leave on the change date.
- (4)
  - (a) At the time of employee accrual of annual leave II, an employing agency shall set aside the cost of each hour of annual leave II for each eligible employee in an amount determined in accordance with rules made by the Division of Finance.
  - (b) The rules made under Subsection (4)(a) shall consider:
    - (i) the employee hourly rate of pay;
    - (ii) applicable employer paid taxes that would be required if the employee was paid for the annual leave II instead of using it for time off;
    - (iii) other applicable employer paid benefits; and
    - (iv) adjustments due to employee hourly rate changes, including the effect on accrued annual leave II balances.
  - (c) The Division of Finance shall provide that the amount of costs set aside under Subsection (4) (a) and deposited into the fund increase by at least the projected increase in annual leave liability for that year, until the year-end trust fund balances are reached as required under Subsection 67-19f-201(3)(b).
- (5) The cost set aside under Subsection (4) shall be deposited by the Division of Finance into the State Employees' Annual Leave Trust Fund created in Section 67-19f-201.
- (6) For annual leave hours accrued before the change date, an employing agency shall continue to comply with the Division of Finance requirements for contributions to the termination pool.
- (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
  - (a) the division shall make rules for the accrual and use of annual leave II provided under this section; and
  - (b) the Division of Finance shall make rules for the set aside provisions under Subsections (4) and (5).

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-511 Parental leave -- Postpartum recovery leave.**

(1) As used in this section:

- (a) "Parental leave" means leave hours a state employer provides to a parental leave eligible employee.
- (b) "Parental leave eligible employee" means an employee who:
  - (i) is in a position that receives retirement benefits under Title 49, Utah State Retirement and Insurance Benefit Act;
  - (ii) accrues paid leave benefits that can be used in the current and future calendar years;
  - (iii) is not reemployed as defined in Section 49-11-1202; and
  - (iv)
    - (A) is a birth parent as defined in Section 78B-6-103;
    - (B) legally adopts a minor child, unless the individual is the spouse of the pre-existing parent;
    - (C) is the intended parent of a child born under a validated gestational agreement in accordance with Title 78B, Chapter 15, Part 8, Gestational Agreement; or
    - (D) is appointed the legal guardian of a minor child or incapacitated adult.
- (c) "Postpartum recovery leave" means leave hours a state employer provides to a postpartum recovery leave eligible employee to recover from childbirth.
- (d) "Retaliatory action" means to do any of the following to an employee:
  - (i) dismiss the employee;
  - (ii) reduce the employee's compensation;
  - (iii) fail to increase the employee's compensation by an amount that the employee is otherwise entitled to or was promised;
  - (iv) fail to promote the employee if the employee would have otherwise been promoted; or
  - (v) threaten to take an action described in Subsections (1)(d)(i) through (iv).
- (e) "Postpartum recovery leave eligible employee" means an employee who:
  - (i) is in a position that receives retirement benefits under Title 49, Utah State Retirement and Insurance Benefit Act;
  - (ii) accrues paid leave benefits that can be used in the current and future calendar years;
  - (iii) is not reemployed as defined in Section 49-11-1202; and
  - (iv) gives birth to a child.
- (f)
  - (i) "State employer" means:
    - (A) a state executive branch agency, including the State Tax Commission, the National Guard, and the Board of Pardons and Parole;
    - (B) the legislative branch of the state; or
    - (C) the judicial branch of the state.
  - (ii) "State employer" does not include:
    - (A) an institute of higher education;
    - (B) the Utah Board of Higher Education;
    - (C) the State Board of Education;
    - (D) an independent entity as defined in Section 63E-1-102;
    - (E) the Attorney General's Office;
    - (F) the State Auditor's Office; or
    - (G) the State Treasurer's Office.
- (g) "Qualified employee" means:
  - (i) a parental leave eligible employee; or
  - (ii) a postpartum leave eligible employee.

(2)

- (a) Except as provided in Subsections (4) and (5), a state employer shall:
    - (i) allow a parental leave eligible employee to use up to three work weeks of paid parental leave for:
      - (A) the birth of the parental leave eligible employee's child;
      - (B) the adoption of a minor child; or
      - (C) the appointment of legal guardianship of a minor child or incapacitated adult; and
    - (ii) allow a postpartum recovery leave eligible employee to use up to three work weeks of paid postpartum recovery leave for recovery from childbirth.
  - (b) A state employer shall allow a qualified employee who is part-time or who works in excess of a 40-hour work week or its equivalent to use the amount of parental leave or postpartum recovery leave available to the qualified employee under this section on a pro rata basis as adopted by rule by the division under Subsection (12).
- (3)
- (a) Parental leave described in Subsection (2)(a)(i):
    - (i) may not be used before the day on which:
      - (A) the parental leave eligible employee's child is born;
      - (B) the parental leave eligible employee adopts a minor child; or
      - (C) the parental leave eligible employee is appointed legal guardian of a minor child or incapacitated adult;
    - (ii) may not be used more than six months after the date described in Subsection (3)(a)(i);
    - (iii) may not be used intermittently, unless:
      - (A) by mutual written agreement between the state employer and the parental leave eligible employee; or
      - (B) a health care provider certifies that intermittent leave is medically necessary due to a serious health condition of the child;
    - (iv) runs concurrently with any leave authorized under the Family and Medical Leave Act of 1993, 29 U.S.C. Sec. 2601 et seq.; and
    - (v) runs consecutively to postpartum recovery leave.
  - (b) The amount of parental leave authorized under Subsection (2)(a)(i) does not increase if a parental leave eligible employee:
    - (i) has more than one child born from the same pregnancy;
    - (ii) adopts more than one minor child; or
    - (iii) is appointed legal guardian of more than one minor child or incapacitated adult.
  - (c) A parental leave eligible employee may not use more than three work weeks of paid parental leave within a single 12-month period, regardless of whether during that 12-month period the parental leave eligible employee:
    - (i) becomes the parent of more than one child;
    - (ii) adopts more than one minor child; or
    - (iii) is appointed legal guardian of more than one minor child or incapacitated adult.
- (4)
- (a) Postpartum recovery leave described in Subsection (2)(a)(ii):
    - (i) shall be used starting on the day on which the postpartum recovery leave eligible employee gives birth, unless a health care provider certifies that an earlier start date is medically necessary;
    - (ii) shall be used in a single continuous period;
    - (iii) runs concurrently with any leave authorized under the Family and Medical Leave Act of 1993, 29 U.S.C. Sec. 2601 et seq.; and
    - (iv) runs consecutively to parental leave.

- (b) The amount of postpartum recovery leave authorized under Subsection (2)(a)(ii) does not increase if a postpartum recovery leave eligible employee has more than one child born from the same pregnancy.
- (5)
  - (a) Except as provided in Subsection (5)(b), a qualified employee shall give the state employer notice at least 30 days before the day on which the qualified employee plans to:
    - (i) begin using parental leave or postpartum recovery leave under this section; and
    - (ii) stop using postpartum recovery leave under this section.
  - (b) If circumstances beyond the qualified employee's control prevent the qualified employee from giving notice in accordance with Subsection (5)(a), the qualified employee shall give each notice described in Subsection (5)(a) as soon as reasonably practicable.
- (6) Except as provided in Subsections (3)(a)(iv) and (4)(a)(iii), a state employer may not charge parental leave or postpartum recovery leave under this section against sick, annual, compensatory, excess, or other leave a qualified employee is entitled to.
- (7) A state employer may not compensate a qualified employee for any unused parental leave or postpartum recovery leave upon termination of employment.
- (8)
  - (a) Following the expiration of a qualified employee's parental leave or postpartum recovery leave under this section, the state employer shall ensure that the qualified employee may return to:
    - (i) the position that the qualified employee held before using parental leave or postpartum recovery leave; or
    - (ii) a position within the state employer that is equivalent in seniority, status, benefits, and pay to the position that the qualified employee held before using parental leave or postpartum recovery leave.
  - (b) If during the time a qualified employee uses parental leave or postpartum recovery leave under this section the state employer experiences a reduction in force and, as part of the reduction in force, the qualified employee would have been separated had the qualified employee not been using the parental leave or postpartum recovery leave, the state employer may separate the qualified employee in accordance with any applicable process or procedure as if the qualified employee were not using the parental leave or postpartum recovery leave.
- (9) During the time a qualified employee uses parental leave or postpartum recovery leave under this section, the qualified employee shall continue to receive all employment related benefits and payments at the same level that the qualified employee received immediately before beginning the parental leave or postpartum leave, provided that the qualified employee pays any required employee contributions.
- (10) A state employer may not:
  - (a) interfere with or otherwise restrain a qualified employee from using parental leave or postpartum recovery leave in accordance with this section; or
  - (b) take retaliatory action against a qualified employee for using parental leave or postpartum recovery leave in accordance with this section.
- (11) A state employer shall provide each employee written information regarding a qualified employee's right to use parental leave or postpartum recovery leave under this section.
- (12) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall, on or before July 1, 2022, make rules for the use and administration of parental leave and postpartum recovery leave under this section, including a schedule that provides paid parental leave or postpartum recovery leave for a qualified employee who is part-time or who works in excess of a 40-hour work week on a pro rata basis.

Amended by Chapter 425, 2022 General Session

**63A-17-512 Leave of absence with pay for employees with a disability who are covered under other civil service systems.**

(1) As used in this section:

- (a) "Eligible officer" means a person who qualifies for a benefit under this section.
- (b)
  - (i) "Law enforcement officer" means a sworn and certified peace officer who is an employee of a law enforcement agency that is part of or administered by the state, and whose primary and principal duties consist of the prevention and detection of crime and the enforcement of criminal statutes of this state.
  - (ii) "Law enforcement officer" specifically includes the following:
    - (A) the commissioner of public safety and any member of the Department of Public Safety certified as a peace officer;
    - (B) all persons specified in Sections 23A-5-202 and 79-4-501;
    - (C) investigators for the Motor Vehicle Enforcement Division;
    - (D) special agents or investigators employed by the attorney general;
    - (E) employees of the Department of Natural Resources designated as peace officers by law;
    - (F) the executive director of the Department of Corrections and any correctional enforcement or investigative officer designated by the executive director and approved by the commissioner of public safety and certified by the division; and
    - (G) correctional enforcement, investigative, or adult probation and parole officers employed by the Department of Corrections serving on or before July 1, 1993.
- (c) "State correctional officer" means a correctional officer as defined in Section 53-13-104 who is employed by the Department of Corrections.

(2)

- (a) A law enforcement officer or state correctional officer who is injured in the course of employment shall be given a leave of absence with 100% of the officer's regular monthly salary and benefits during the period the employee has a temporary disability.
- (b) The benefit provided under Subsection (2)(a):
  - (i) shall be offset as provided under Subsection (4); and
  - (ii) may not exceed 100% of the officer's regular monthly salary and benefits, including all offsets required under Subsection (4).

(3)

- (a) A law enforcement officer or state correctional officer who has a total disability as defined in Section 49-21-102, shall be given a leave of absence with 100% of the officer's regular monthly salary and benefits until the officer is eligible for an unreduced retirement under Title 49, Utah State Retirement and Insurance Benefit Act, or reaches the retirement age of 62 years, whichever occurs first, if:
  - (i) the disability is a result of an injury sustained while in the lawful discharge of the officer's duties; and
  - (ii) the injury is the result of:
    - (A) a criminal act upon the officer; or
    - (B) an aircraft, vehicle, or vessel accident and the officer was not negligent in causing the accident.
- (b) The benefit provided under Subsection (3)(a):
  - (i) shall be offset as provided under Subsection (4); and

- (ii) may not exceed 100% of the officer's regular monthly salary and benefits, including all offsets required under Subsection (4).
- (4)
- (a) The agency shall reduce or require the reimbursement of the monthly benefit provided under this section by any amount received by, or payable to, the eligible officer for the same period of time during which the eligible officer is entitled to receive a monthly disability benefit under this section.
  - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules establishing policies and procedures for the reductions required under Subsection (4)(a).

Amended by Chapter 34, 2023 General Session

## **Part 6 Grievance Provisions**

### **63A-17-601 Grievance resolution -- Jurisdiction.**

- (1) Employees shall comply with the procedural and jurisdictional requirements of this section, Title 63G, Chapter 4, Administrative Procedures Act, and Chapter 19a, Grievance Procedures, in seeking resolution of grievances.
- (2) All grievances based upon a claim or charge of injustice or oppression, including dismissal from employment, resulting from an act, occurrence, commission, or condition shall be governed by Title 67, Chapter 19a, Grievance Procedures, and Title 63G, Chapter 4, Administrative Procedures Act.
- (3) All grievances involving classification shall be governed by Section 63A-17-602 and are designated as informal adjudicative proceedings as defined by Title 63G, Chapter 4, Administrative Procedures Act.
- (4) All grievances by applicants for positions in state government involving an alleged discriminatory or prohibited employment practice shall be governed by Section 63A-17-603 and Title 63G, Chapter 4, Administrative Procedures Act.
- (5) A "grievance" under this chapter is a request for agency action for purposes of Title 63G, Chapter 4, Administrative Procedures Act.

Renumbered and Amended by Chapter 344, 2021 General Session

### **63A-17-602 Position classification grievances -- Scope -- Procedure.**

- (1)
  - (a) For the purpose of position classification grievances, the process that culminates in assigning a career service position to an appropriate class specification is a matter of position classification and may be grieved.
  - (b) The process that culminates in assigning a salary range to the class specification is not a position classification and may not be grieved as a classification grievance.
- (2)
  - (a) Upon receipt of a position classification grievance, the director shall refer the grievance to a classification panel of three or more impartial persons trained in state classification procedures.

- (b) The classification panel shall determine whether or not the classification assignment for career service positions was appropriate by applying the statutes, rules, and procedures adopted by the division that were in effect at the time of the classification change.
  - (c) The classification panel may:
    - (i) obtain access to previous audits, classification decisions, and reports;
    - (ii) request new or additional audits by human resource analysts; and
    - (iii) consider new or additional information.
  - (d) The classification panel may sustain or modify the original decision and, if applicable, recommend a new classification.
  - (e) The classification panel shall report the classification panel's recommendation to the director, who shall make the classification decision and notify the grievant.
- (3)
- (a) Either party may appeal the director's decision to an impartial hearing officer trained in state classification procedures selected through a public bid process by a panel consisting of the following members:
    - (i) a current or former government employee with experience in human resource management;
    - (ii) two department executive directors;
    - (iii) a private sector human resources executive appointed by the governor; and
    - (iv) a representative of the Utah Public Employees Association.
  - (b) The successful bid shall serve under contract for no more than three years. At the end of that time, the division shall reissue the bid.
  - (c) The hearing officer shall review the classification and make the final decision. The final decision is subject to judicial review pursuant to the provisions of Section 63G-4-402.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-603 Discriminatory/prohibited employment practices grievances -- Procedures.**

- (1) An applicant for a position in state government, a probationary employee, career service employee, or an exempt employee who alleges a discriminatory or prohibited employment practice as defined in Section 34A-5-106 may submit a written grievance to the department head where the alleged unlawful act occurred.
- (2) Within 10 working days after a written grievance is submitted under Subsection (1), the department head shall issue a written response to the grievance stating his decision and the reasons for the decision.
- (3) If the department head does not issue a decision within 10 days, or if the grievant is dissatisfied with the decision, the grievant may submit a complaint to the Division of Antidiscrimination and Labor, pursuant to Section 34A-5-107.

Renumbered and Amended by Chapter 344, 2021 General Session

**Part 7**  
**Administrative Law Judges**

**63A-17-701 Definitions.**

In addition to the definitions found in Section 63A-17-102, as used in this part:

- (1)

- (a) "Administrative law judge" means an individual who is employed or contracted by a state agency who:
    - (i) presides over or conducts formal administrative hearings on behalf of an agency;
    - (ii) has the power to administer oaths, rule on the admissibility of evidence, take testimony, evaluate evidence, and make determinations of fact; and
    - (iii) issues written orders, rulings, or final decisions on behalf of an agency.
  - (b) "Administrative law judge" does not mean:
    - (i) an individual who reviews an order or ruling of an administrative law judge; or
    - (ii) the executive director of a state agency.
- (2) "Committee" means the Administrative Law Judge Conduct Committee created in Section 63A-17-708.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-702 Administrative law judges -- Applicability -- Destruction of evidence.**

- (1)
- (a) Except as provided in Subsections (1)(b) and (2), the provisions of this part apply to an administrative law judge who conducts formal adjudicative proceedings.
  - (b) Except as provided in Subsection (2), the provisions of this part do not apply to an administrative law judge who is employed by or contracts with:
    - (i) the Board of Pardons and Parole;
    - (ii) the Department of Corrections; or
    - (iii) the State Tax Commission.
- (2) The code of conduct established by the division under Subsection 63A-17-703(4) applies to all administrative law judges.
- (3) An administrative law judge who tampers with or destroys evidence submitted to the administrative law judge is subject to the provisions of Section 76-8-510.5. This section does not apply to documents destroyed in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-703 Rulemaking authority.**

The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

- (1) establishing minimum performance standards for all administrative law judges;
- (2) providing procedures for filing, addressing, and reviewing complaints against administrative law judges;
- (3) providing standards for complaints against administrative law judges;
- (4) promulgating a code of conduct for all administrative law judges in all state agencies; and
- (5) establishing a procedural fairness training program as described in Section 63A-17-709.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-704 Hiring of administrative law judges.**

- (1) Except as provided in Subsection (6), each administrative law judge hired on or after May 10, 2016, shall be hired in accordance with this section.



- (2) If an applicant for an administrative law judge position is selected for an interview in accordance with applicable law and division rule, the agency shall interview the applicant by means of a hiring panel.
- (3) The hiring panel described in Subsection (2) shall consist of:
  - (a) the head of the hiring agency;
  - (b) the head of another agency, appointed by the director; and
  - (c) the director.
- (4) Each individual described in Subsection (3) may designate another individual to serve on the hiring panel on the individual's behalf.
- (5) After the hiring panel completes the interviews for an administrative law judge position:
  - (a) the hiring panel shall select the top three applicants for the administrative law judge position; and
  - (b) the head of the hiring agency shall:
    - (i) consider any opinions or feedback from the other members of the hiring panel with respect to the top three applicants; and
    - (ii)
      - (A) hire an applicant from the top three applicants to fill the administrative law judge position; or
      - (B) decide not to hire any of the top three applicants and restart the hiring process to fill the administrative law judge position.
- (6) This section does not apply to an administrative law judge who is appointed by the governor.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-705 Performance evaluation of administrative law judges.**

- (1) The division shall prepare a performance evaluation for each administrative law judge contracted or employed by a state agency.
- (2) The performance evaluation for an administrative law judge shall include:
  - (a) the results of the administrative law judge's performance evaluations conducted by the employing agency since the administrative law judge's last performance evaluation conducted by the division in accordance with the performance evaluation procedure for the agency;
  - (b) information from the employing agency concerning the administrative law judge's compliance with minimum performance standards;
  - (c) the administrative law judge's disciplinary record, if any;
  - (d) the results of any performance surveys conducted since the administrative law judge's last performance review conducted by the division; and
  - (e) any other factor that the division considers relevant to evaluating the administrative law judge's performance.
- (3) If an administrative law judge fails to meet the minimum performance standards the division shall provide a copy of the performance evaluation and survey to the employing agency.
- (4) The division shall conduct performance reviews every four years for administrative law judges contracted or employed by an agency.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-706 Performance surveys.**

- (1) All administrative law judges shall be on a four-year staggered cycle for performance evaluations.

- (2) The performance survey shall include as respondents a sample of each of the following groups as applicable:
  - (a) attorneys who have appeared before the administrative law judge as counsel; and
  - (b) staff who have worked with the administrative law judge.
- (3) The division may include an additional classification of respondents if the division:
  - (a) considers a survey of that classification of respondents helpful to the division; and
  - (b) establishes the additional classification of respondents by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (4) A survey response is anonymous, including any comment included with a survey response.
- (5) If the division provides any information to an administrative law judge or the committee, the information shall be provided in a manner to protect the confidentiality of a survey respondent.
- (6) If the division establishes an additional classification, in accordance with Subsection (3), a survey shall be provided to a potential survey respondent within 30 days of the day on which the case in which the person appeared before the administrative law judge is closed, exclusive of any appeal. Staff and attorneys may be surveyed at any time during the survey period.
- (7) The performance survey shall include questions relating to whether the administrative law judge's behavior furthers the following elements of procedural fairness:
  - (a) neutrality, including:
    - (i) consistent and equal treatment of the individuals who appear before the administrative law judge;
    - (ii) concern for the individual needs of the individuals who appear before the administrative law judge; and
    - (iii) careful deliberation;
  - (b) respectful treatment of others; and
  - (c) providing individuals a voice and opportunity to be heard.
- (8) The performance survey may include questions concerning an administrative law judge's:
  - (a) legal ability, including the following:
    - (i) demonstration of understanding of the substantive law and any relevant rules of procedure and evidence;
    - (ii) attentiveness to factual and legal issues before the administrative law judge;
    - (iii) adherence to precedent and ability to clearly explain departures from precedent;
    - (iv) grasp of the practical impact on the parties of the administrative law judge's rulings, including the effect of delay and increased litigation expense;
    - (v) ability to write clear opinions and decisions; and
    - (vi) ability to clearly explain the legal basis for opinions;
  - (b) temperament and integrity, including the following:
    - (i) demonstration of courtesy toward attorneys, staff, and others in the administrative law judge's department;
    - (ii) maintenance of decorum in the courtroom;
    - (iii) demonstration of judicial demeanor and personal attributes that promote public trust and confidence in the administrative law judge system;
    - (iv) preparedness for oral argument;
    - (v) avoidance of impropriety or the appearance of impropriety;
    - (vi) display of fairness and impartiality toward all parties; and
    - (vii) ability to clearly communicate, including the ability to explain the basis for written rulings, court procedures, and decisions; and
  - (c) administrative performance, including the following:
    - (i) management of workload;

- (ii) sharing proportionally the workload within the division; and
  - (iii) issuance of opinions and orders without unnecessary delay.
- (9) If the division determines that a certain survey question or category of questions is not appropriate for a respondent group, the division may omit that question or category of questions from the survey provided to that respondent group.
- (10)
- (a) The survey shall allow respondents to indicate responses in a manner determined by the division, which shall be:
    - (i) on a numerical scale from one to five; or
    - (ii) in the affirmative or negative, with an option to indicate the respondent's inability to respond in the affirmative or negative.
  - (b) To supplement the responses to questions on either a numerical scale or in the affirmative or negative, the division may allow respondents to provide written comments.
- (11) The division shall compile and make available to each administrative law judge that administrative law judge's survey results with each of the administrative law judge's performance evaluations.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-707 Complaints.**

- (1) A complaint against an administrative law judge shall be filed with the division.
- (2) Upon receipt of a complaint, the division shall conduct an investigation.
- (3) If the division's investigation determines that the complaint is frivolous or without merit, it may dismiss it without further action. A complaint that merely indicates disagreement, without further misconduct, with the administrative law judge's decision shall be treated as without merit.
- (4) The contents of all complaints and subsequent investigations are classified as protected under Title 63G, Chapter 2, Government Records Access and Management Act.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-708 Administrative Law Judge Conduct Committee.**

- (1) There is created the Administrative Law Judge Conduct Committee to investigate, review, and hear complaints filed against administrative law judges.
- (2) The committee shall be composed of:
  - (a) the director, or the director's designee, as chair; and
  - (b) four executive directors, or their designees, of agencies that employ or contract with administrative law judges, to be selected by the director as needed.
- (3) The division shall provide staff for the committee as needed.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-709 Procedure for review of complaint by conduct committee.**

- (1) Upon a determination that a complaint requires further action, the director shall select four executive directors or their designees and convene the committee. The executive director of the agency that employs or contracts with the administrative law judge who is the subject of the complaint may not be a member of the committee.

- (2) The division shall provide a copy of the complaint, along with the results of the division's investigation, to the committee and the administrative law judge who is the subject of the complaint. If the committee directs, a copy of the complaint and investigation may also be provided to the attorney general.
- (3) The committee shall allow an administrative law judge who is the subject of a complaint to appear and speak at any committee meeting, except a closed meeting, during which the committee is deliberating the complaint.
- (4) The committee may meet in a closed meeting to discuss a complaint against an administrative law judge by complying with Title 52, Chapter 4, Open and Public Meetings Act.
- (5) After deliberation and discussion of the complaint and all information provided, the committee shall provide a report, with a recommendation, to the agency. The recommendation shall include:
  - (a) a brief description of the complaint and results of the division's investigation;
  - (b) the committee's findings; and
  - (c) a recommendation from the committee whether action should be taken against the administrative law judge.
- (6) Actions recommended by the committee may include no action, disciplinary action, termination, or any other action an employer may take against an employee.
- (7) The record of an individual committee member's vote on recommended actions against an administrative law judge is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-710 Required training.**

- (1) Each year that an administrative law judge receives a performance evaluation conducted by the division under this chapter, the administrative law judge shall complete the procedural fairness training program described in this section.
- (2) The division shall establish a procedural fairness training program that includes training on how an administrative law judge's actions and behavior influence others' perceptions of the fairness of the adjudicative process.
- (3) The procedural fairness training program shall include discussion of the following elements of procedural fairness:
  - (a) neutrality, including:
    - (i) consistent and equal treatment of the individuals who appear before the administrative law judge;
    - (ii) concern for the individual needs of the individuals who appear before the administrative law judge; and
    - (iii) unhurried and careful deliberation;
  - (b) respectful treatment of others; and
  - (c) providing individuals a voice and opportunity to be heard.
- (4) The division may contract with a public or private person to develop or provide the procedural fairness training program.
- (5) The division shall ensure that the procedural fairness training program complies with Title 63G, Chapter 22, State Training and Certification Requirements.

Renumbered and Amended by Chapter 344, 2021 General Session

## Part 8 Plans and Programs

### **63A-17-801 Equal employment opportunity plan.**

- (1) In conjunction with the director's duties under Section 63A-17-106, and notwithstanding the general prohibition in Subsection 34A-5-106(3)(c), the director shall prepare an equal employment opportunity plan for state employment consistent with the guidelines provided in federal equal employment opportunity laws and in related federal regulations.
- (2) The equal employment opportunity plan required by this section applies only to state career service employees described in Section 63A-17-301.
- (3) The Legislature shall review the equal employment opportunity plan required by this section before it may be implemented.
- (4) Nothing in this section requires the establishment of hiring quotas or preferential treatment of any identifiable group.

Renumbered and Amended by Chapter 344, 2021 General Session

### **63A-17-802 Education benefit plan for law enforcement and correctional officers.**

- (1) As used in this section:
  - (a) "Law enforcement officer" means the same as that term is defined in Section 53-13-103.
  - (b) "Correctional officer" means the same as that term is defined in Section 53-13-104.
- (2) The director shall establish a plan authorizing any agency to implement an educational compensation program for law enforcement officers and correctional officers employed by that agency.
- (3) The program shall provide that in order for a law enforcement officer or correctional officer to qualify for education benefits for college or university education, the law enforcement officer or correctional officer shall:
  - (a) provide a certified transcript of grades, demonstrating a grade point average of 3.0 or greater, from an accredited college or university; and
  - (b) have successfully completed the probationary employment period with the employing agency.
- (4) The program shall also provide that the agency may consider a law enforcement officer or correctional officer to receive additional compensation as follows for higher education degrees earned on or after April 30, 2001, in a subject area directly related to the law enforcement officer's or correctional officer's employment with the agency:
  - (a) 5.5% for an associate's degree;
  - (b) 5.5% for a bachelor's degree; and
  - (c) 5.5% for a master's degree.
- (5) Expenses incurred by an agency to provide additional compensation under this section may be only from the agency's existing budget.

Renumbered and Amended by Chapter 344, 2021 General Session

### **63A-17-803 Creation of Flexible Benefit Program -- Rulemaking power granted to establish program.**

- (1) The division shall establish for calendar year 1990 and thereafter a Flexible Benefit Program under Section 125 of the Internal Revenue Code of 1986.

- (2) The division shall establish accounts for all employees eligible for benefits which meet the nondiscrimination requirements of the Internal Revenue Code of 1986.
- (3)
  - (a) Each account established under this section shall include employee paid premiums for health and dental services.
  - (b) The account may also include, at the option of the employee, out-of-pocket employee medical and dependent care expenses.
  - (c) Accounts may also include other expenses allowed under the Internal Revenue Code of 1986.
- (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules to implement the program established under this section.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-804 Continuation of Insurance Benefits Program -- Creation -- Coverage following death in the line of duty.**

- (1) There is created the "Continuation of Insurance Benefits Program" to provide a continuation of insurance to the surviving spouse and family of any state employee whose death occurs in the line of duty.
- (2) The insurance coverage shall be the same coverage as provided under Section 49-20-406.
- (3) The program provides that unused accumulated sick leave of a deceased employee may be used for additional medical coverage in the same manner as provided under Section 63A-17-507 or 63A-17-508 as applicable.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-805 State employee matching supplemental defined contribution benefit.**

- (1) As used in this section:
  - (a) "Qualifying account" means:
    - (i) a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code, which is sponsored by the Utah State Retirement Board;
    - (ii) a deemed Individual Retirement Account authorized under the Internal Revenue Code, which is sponsored by the Utah State Retirement Board; or
    - (iii) a similar savings plan or account authorized under the Internal Revenue Code, which is sponsored by the Utah State Retirement Board.
  - (b) "Qualifying employee" means an employee who is:
    - (i) in a position that is:
      - (A) receiving retirement benefits under Title 49, Utah State Retirement and Insurance Benefit Act; and
      - (B) accruing paid leave benefits that can be used in the current and future calendar years; and
    - (ii) not an employee who is reemployed as that term is:
      - (A) defined in Section 49-11-1202; or
      - (B) used in Section 49-11-504.
- (2) Subject to the requirements of Subsection (3), an employer shall make a biweekly matching contribution to every qualifying employee's defined contribution plan qualified under Section 401(k) of the Internal Revenue Code, subject to federal requirements and limitations, which is sponsored by the Utah State Retirement Board.
- (3)

- (a) In accordance with the requirements of this Subsection (3), each qualifying employee shall be eligible to receive the same dollar amount for the contribution under Subsection (2).
- (b) A qualifying employee who is hired before July 1, 2023:
  - (i) shall receive the contribution amount determined under Subsection (3)(f) if the qualifying employee makes a voluntary personal contribution to one or more qualifying accounts in an amount equal to or greater than the employer's contribution amount determined under Subsection (3)(f);
  - (ii) shall receive a partial contribution amount that is equal to the qualifying employee's personal contribution amount if the employee makes a voluntary personal contribution to one or more qualifying accounts in an amount less than the employer's contribution amount determined under Subsection (3)(f); or
  - (iii) may not receive a contribution under Subsection (2) if the qualifying employee does not make a voluntary personal contribution to a qualifying account.
- (c)
  - (i) An employer shall automatically enroll a qualifying employee who is hired on or after July 1, 2023, to make a personal contribution to a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code, which is sponsored by the Utah State Retirement Board, in an amount equal to the employer's contribution amount determined under Subsection (3)(f).
  - (ii) A qualifying employee who makes a personal contribution in accordance with Subsection (3)(c)(i) shall receive the contribution amount determined under Subsection (3)(f).
- (d)
  - (i) A qualifying employee who is hired on or after July 1, 2023, may opt out of the automatic enrollment by choosing not to make any future personal contributions.
  - (ii) A qualifying employee who opts out of automatic enrollment in accordance with this Subsection (3)(d) may not receive a contribution under Subsection (2).
- (e)
  - (i) A qualifying employee who is hired on or after July 1, 2023, may modify the automatic enrollment by opting to make future personal contributions:
    - (A) in an amount other than the amount determined under Subsection (3)(f); or
    - (B) to a qualifying account other than the defined contribution plan qualified under Section 401(k) of the Internal Revenue Code, which is sponsored by the Utah State Retirement Board.
  - (ii) A qualifying employee who opts to make a personal contribution for less than the amount determined under Subsection (3)(f) shall receive a partial contribution that is equal to the qualifying employee's personal contribution amount.
- (f)
  - (i) Subject to the maximum limit under Subsection (3)(f)(iii), the Legislature shall annually determine the contribution amount that an employer shall provide to each qualifying employee under Subsection (2).
  - (ii) The division shall make recommendations annually to the Legislature on the contribution amount required under Subsection (2), in consultation with the Governor's Office of Planning and Budget and the Division of Finance.
  - (iii) The biweekly matching contribution amount required under Subsection (2) may not exceed \$26 for each qualifying employee.
- (4) A qualifying employee is eligible to receive the biweekly contribution under this section for any pay period in which the employee is in a paid status or other status protected by federal or state law.

- (5) The employer and employee contributions made and related earnings under this section vest immediately upon deposit and can be withdrawn by the employee at any time, subject to Internal Revenue Code regulations on the withdrawals.
- (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director shall make rules establishing procedures to implement the provisions of this section.

Amended by Chapter 442, 2023 General Session

**63A-17-806 Definitions -- Infant at Work Pilot Program -- Administration -- Report.**

- (1) As used in this section:
  - (a) "Eligible employee" means an employee who has been employed by the Department of Health and Human Services for a minimum of:
    - (i) 12 consecutive months; and
    - (ii) 1,250 hours, excluding paid time off during the 12-month period immediately preceding the day on which the employee applies for participation in the program.
  - (b) "Infant" means a baby that is at least six weeks of age and no more than six months of age.
  - (c) "Parent" means:
    - (i) a biological or adoptive parent of an infant; or
    - (ii) an individual who has an infant placed in the individual's foster care by the Division of Child and Family Services.
  - (d) "Program" means the Infant at Work Pilot Program established in this section.
- (2) There is created the Infant at Work Pilot Program for eligible employees.
- (3) The program shall:
  - (a) allow an eligible employee to bring the eligible employee's infant to work subject to the provisions of this section;
  - (b) be administered by the division; and
  - (c) be implemented for a minimum of one year.
- (4) The division shall establish an application process for eligible employees of the Department of Health and Human Services to apply to the program that includes:
  - (a) a process for evaluating whether an eligible employee's work environment is appropriate for an infant;
  - (b) guidelines for infant health and safety; and
  - (c) guidelines regarding an eligible employee's initial and ongoing participation in the program.
- (5) If the division approves the eligible employee for participation in the program, the eligible employee shall have the sole responsibility for the care and safety of the infant at the workplace.
- (6) The division may not require the Department of Health and Human Services to designate or set aside space for an eligible employee's infant other than the eligible employee's existing work space.
- (7) The division, in consultation with the Department of Health and Human Services, shall make rules that the department determines necessary to establish the program in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (8) On or before June 30, 2025, the division, in consultation with the Department of Health and Human Services, shall submit a written report to the Business and Labor Interim Committee that describes the efficacy of the program, including any recommendations for additional legislative action.

Amended by Chapter 329, 2023 General Session



Amended by Chapter 530, 2023 General Session

**63A-17-807 Department award program.**

- (1) As used in this section:
  - (a) "Department" means the Department of Government Operations, the Department of Agriculture and Food, the Department of Alcoholic Beverage Services, the Department of Commerce, the Department of Cultural and Community Engagement, the Department of Corrections, the Department of Workforce Services, the Department of Environmental Quality, the Department of Financial Institutions, the Department of Health, the Department of Human Services, the Insurance Department, the National Guard, the Department of Natural Resources, the Department of Public Safety, the Public Service Commission, the Labor Commission, the State Board of Education, the Utah Board of Higher Education, the State Tax Commission, and the Department of Transportation.
  - (b) "Department head" means the individual or body of individuals in whom the ultimate legal authority of the department is vested by law.
- (2) There is created a department awards program to award an outstanding employee in each department of state government.
- (3)
  - (a) On or before April 1 of each year, each department head shall solicit nominations for outstanding employee of the year for that department from the employees in that department.
  - (b) On or before July 1 of each year, the department head shall:
    - (i) select a person from the department to receive the outstanding employee of the year award using the criteria established in Subsection (3)(c); and
    - (ii) announce the recipient of the award to the employees of the department.
  - (c) Department heads shall make the award to an employee who demonstrates:
    - (i) extraordinary competence in performing the employee's function;
    - (ii) creativity in identifying problems and devising workable, cost-effective solutions;
    - (iii) excellent relationships with the public and other employees;
    - (iv) a commitment to serving the public as the client; and
    - (v) a commitment to economy and efficiency in government.
- (4)
  - (a) The division shall divide any appropriation for outstanding department employee awards that the division receives from the Legislature equally among the departments.
  - (b) If a department receives money from the division or if a department budget allows, that department head shall provide the employee with a bonus, a plaque, or some other suitable acknowledgement of the award.
- (5)
  - (a) A department head may name the award after an exemplary present or former employee of the department.
  - (b) A department head may not name the award for oneself or for any relative as defined in Section 52-3-1.

Amended by Chapter 447, 2022 General Session

**63A-17-808 On-site child care for state employees.**

- (1) As used in this section:
  - (a) "Child care" means the same as that term is defined in Section 35A-3-201.

- (b) "Licensed child care provider" means a person who holds a license from the Department of Health and Human Services to provide center based child care in accordance with Title 26, Chapter 39, Utah Child Care Licensing Act.
- (c) "On-site child care center" means a child care center established in a facility that is owned or operated by an agency.
- (2) An agency may enter into a contract with a licensed child care provider to operate an on-site child care center for the benefit of the agency's employees.
- (3) A licensed child care provider that operates an on-site child care center for an agency shall maintain professional liability insurance.
- (4)
  - (a) An agency may charge a licensed child care provider a reasonable fee for operating an on-site child care center so that the agency incurs no expense.
  - (b) The fee in Subsection (4)(a) shall include costs for utility, building maintenance, and administrative services supplied by the agency that are related to the operation of the on-site child care center.
- (5) An agency may consult with the Office of Child Care within the Department of Workforce Services, the Department of Health and Human Services, and the Division of Facilities Construction and Management for assistance in establishing an on-site child care center.
- (6) The state is not liable for any civil damages for acts or omissions resulting from the operation of an on-site child care center.

Enacted by Chapter 279, 2023 General Session

**63A-17-809 Guidance and data collection regarding employment of individuals with criminal histories.**

- (1) The division shall:
  - (a) provide information and guidance to agencies encouraging the hiring of individuals with criminal histories, including:
    - (i) skills developed during incarceration through the Division of Correctional Industries and any other relevant program; and
    - (ii) guidelines to determine whether an applicant's conviction, disclosed in accordance with Section 34-52-201, is a job-related conviction; and
  - (b) ensure that agency job opportunities available to individuals with criminal histories are included in the web portal.
- (2) On or before October 1, 2024, the division shall provide a written report to the Law Enforcement and Criminal Justice Interim Committee describing the efforts described in Subsection (1).

Enacted by Chapter 58, 2023 General Session

**Part 9**  
**General Requirements for State Officers and Employees**

**63A-17-904 Political activity of employees -- Rules and regulations -- Highway patrol -- Hatch Act.**

- (1) Except as otherwise provided by law or by rules made under this section for federally aided programs, the provisions of this section apply with regard to political activity of career service employees in all grades and positions.
- (2) Career service employees may voluntarily participate in political activity subject to the following provisions:
  - (a) if any career service employee is elected to any partisan or full-time nonpartisan political office, that employee shall be granted a leave of absence without pay for times when monetary compensation is received for service in political office;
  - (b) no officer or employee in career service may engage in any political activity during the hours of employment, nor may any person solicit political contributions from employees of the executive branch during hours of employment for political purposes; and
  - (c) partisan political activity may not be a basis for employment, promotion, demotion, or dismissal, except that the director shall adopt rules providing for the discipline or punishment of a state officer or employee who violates any provision of this section.
- (3)
  - (a) Notwithstanding any other provision of this section, no member of the Utah Highway Patrol may use the member's official authority or influence for the purpose of interfering with an election or affecting the results of an election.
  - (b) No person may induce or attempt to induce any member of the Utah Highway Patrol to participate in any activity prohibited by this Subsection (3).
- (4) Nothing contained in this section may be construed to:
  - (a) preclude voluntary contributions by an employee to the party or candidate of the officer's or employee's choice; or
  - (b) permit partisan political activity by any employee who is prevented or restricted from engaging in the political activity by the provisions of the federal Hatch Act.

Renumbered and Amended by Chapter 344, 2021 General Session

## **Part 10**

### **Controlled Substances and Alcohol Use**

#### **63A-17-1001 Controlled substances and alcohol use prohibited.**

Except as provided in Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, an employee may not:

- (1) manufacture, dispense, possess, use, distribute, or be under the influence of a controlled substance or alcohol during work hours or on state property except where legally permissible;
- (2) manufacture, dispense, possess, use, or distribute a controlled substance or alcohol if the activity prevents:
  - (a) state agencies from receiving federal grants or performing under federal contracts of \$25,000 or more; or
  - (b) the employee to perform his services or work for state government effectively as regulated by the rules of the executive director in accordance with Section 63A-17-1002; or
- (3) refuse to submit to a drug or alcohol test under Section 63A-17-1004.

Amended by Chapter 329, 2023 General Session

**63A-17-1002 Rulemaking power to director.**

In accordance with this part and Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director shall make rules regulating:

- (1) disciplinary actions for employees subject to discipline under Section 63A-17-1005;
- (2) the testing of employees for the use of controlled substances or alcohol as provided in Section 63A-17-1004;
- (3) the confidentiality of drug testing and test results performed under Section 63A-17-1004 in accordance with Title 63G, Chapter 2, Government Records Access and Management Act; and
- (4) minimum blood levels of alcohol or drug content for work effectiveness of an employee.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-1003 Reporting of convictions under federal and state drug laws.**

- (1) An employee who is convicted under a federal or state criminal statute regulating the manufacture, distribution, dispensation, possession, or use of a controlled substance shall report the conviction to the director of the employee's agency within five calendar days after the date of conviction.
- (2) Upon notification either under Subsection (1) or otherwise, the director of the agency shall notify the federal agency for which a contract is being performed within 10 days after receiving notice.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-1004 Drug testing of state employees.**

- (1) Except as provided in Subsection (2), when there is reasonable suspicion that an employee is using a controlled substance or alcohol unlawfully during work hours, an employee may be required to submit to medically accepted testing procedures for a determination of whether the employee is using a controlled substance or alcohol in violation of this part.
- (2) In highly sensitive positions, as identified in department class specifications, random drug testing of employees may be conducted by an agency in accordance with the rules of the director.
- (3) All drug or alcohol testing shall be:
  - (a) conducted by a federally certified and licensed physician, a federally certified and licensed medical clinic, or testing facility federally certified and licensed to conduct medically accepted drug testing; and
  - (b) conducted in accordance with the rules of the director made under Section 63A-17-1002.
- (4) A record relating to drug or alcohol testing of a state employee is classified as a private record under Section 63G-2-302.
- (5) A physician, medical clinic, or testing facility may not be held liable in any civil action brought by a party for:
  - (a) performing or failing to perform a test under this section;
  - (b) issuing or failing to issue a test result under this section; or
  - (c) acting or omitting to act in any other way in good faith under this section.

Amended by Chapter 169, 2022 General Session

**63A-17-1005 Discipline of employees.**

An employee shall be subject to the rules of discipline of the director made in accordance with Section 63A-17-1002, if the employee:

- (1) refuses to submit to testing procedures provided in Section 63A-17-1004;
- (2) refuses to complete a drug rehabilitation program in accordance with Subsection 63A-17-1006(3);
- (3) is convicted under a federal or state criminal statute regulating the manufacture, distribution, dispensation, possession, or use of a controlled substance; or
- (4) manufactures, dispenses, possesses, uses, or distributes a controlled substance in violation of state or federal law during work hours or on state property.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-1006 Violations and penalties.**

In addition to other criminal penalties provided by law, an employee who:

- (1) fails to notify the employee's director under Section 63A-17-1003 is subject to disciplinary proceedings as established by the director by rule in accordance with Section 63A-17-1002;
- (2) refuses to submit to testing procedures provided for in Section 63A-17-1004, may be suspended immediately without pay pending further disciplinary action as provided by rule, made by the director in accordance with Section 63A-17-1002; or
- (3) tests positive for the presence of unlawfully used controlled substances or alcohol may be required, as part of the employee's disciplinary treatment, to complete a drug rehabilitation program at the employee's expense within 60 days after receiving the positive test results or be subject to further disciplinary procedures established by rule made by the director in accordance with Section 63A-17-1002.

Renumbered and Amended by Chapter 344, 2021 General Session

**63A-17-1007 Exemptions.**

Peace officers, as defined under Title 53, Chapter 13, Peace Officer Classifications, acting in their official capacity as peace officers in undercover roles and assignments, are exempt from the provisions of this act.

Renumbered and Amended by Chapter 344, 2021 General Session

**Chapter 18**  
**Utah Transparency Advisory Board**

**Part 1**  
**General Provisions**

**63A-18-101 Title.**

This chapter is known as the "Utah Transparency Advisory Board."

Enacted by Chapter 84, 2021 General Session

