

OPEN GOVERNMENT AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Dougall

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Government Records Access and Management Act (GRAMA) and other portions of the Utah Code by requiring the disclosure of certain records and creating the Utah Public Records Website as a central location for the public to access public records.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates the Utah Public Records Website (website), to be established and maintained by the Division of Archives and Records Services (division), with the assistance of the Department of Technology Services;
- ▶ describes the purpose and character of the website and the records that are required to be posted on the website;
- ▶ grants rulemaking authority, in relation to the website, to the division;
- ▶ creates the Utah Public Records Website Advisory Board (board);
- ▶ describes the membership, duties, and powers of the board; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **63A-12-100.5**, as last amended by Laws of Utah 2011, Chapter 265

32 ENACTS:

33 **63A-12-110**, Utah Code Annotated 1953

34 **63G-2-1001**, Utah Code Annotated 1953

35 **63G-2-1002**, Utah Code Annotated 1953

36 **63G-2-1003**, Utah Code Annotated 1953

37 **63G-2-1004**, Utah Code Annotated 1953

37a **H→ 63G-2-1005, Utah Code Annotated 1953 ←H**



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

40 Section 1. Section **63A-12-100.5** is amended to read:

41 **63A-12-100.5. Definitions.**

42 (1) Except as provided under Subsection (2), the definitions in Section 63G-2-103
43 apply to this chapter.

44 (2) As used in this chapter[~~,"division"~~]:

45 (a) "Advisory board" means the Utah Public Records Website Advisory Board, created
46 in Section 63A-12-110.

47 (b) "Division" or "state archives" means the Division of Archives and Records Service.

48 Section 2. Section **63A-12-110** is enacted to read:

49 **63A-12-110. Utah Public Records Website Advisory Board.**

50 (1) There is created, within the division, the Utah Public Records Website Advisory
51 Board, consisting of the following 14 members:

52 (a) a member of the Senate, appointed by the president of the Senate;

53 (b) a member of the House of Representatives, appointed by the speaker of the House
54 of Representatives;

55 (c) the following members appointed by the governor:

56 (i) a member to represent higher education;

57 (ii) a member to represent public schools;

58 (iii) a member to represent counties;

- 59 (iv) a member to represent cities and towns;
- 60 (v) a member to represent special service districts;
- 61 (vi) a member to represent local districts;
- 62 (vii) a member of the media;
- 63 (viii) a member who is a citizen interested in public records issues; and
- 64 (ix) a member who represents a state executive branch department;
- 65 (d) a member appointed by the director of the division;
- 66 (e) a member appointed by the director of the Department of Technology Services; and
- 67 (f) a member who is a records officer for a law enforcement agency, appointed by the
- 68 director of the Department of Public Safety.
- 69 (2) A majority of the members of the advisory board, who have not been recused for a
- 70 particular issue or meeting, constitute a quorum of the advisory board.
- 71 (3) A majority vote of a quorum present at a meeting constitutes the action of the
- 72 advisory board.
- 73 (4) A member shall serve on the advisory board until the member resigns or is replaced
- 74 by the person who appointed the member.
- 75 (5) (a) A member of the advisory board who is not a legislator may not receive
- 76 compensation or benefits for the member's service, but may receive per diem and travel
- 77 expenses in accordance with:
- 78 (i) Section 63A-3-106;
- 79 (ii) Section 63A-3-107; and
- 80 (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
- 81 63A-3-107.
- 82 (b) Salary and expenses of a member of the advisory board who is a legislator shall be
- 83 paid in accordance with Section 36-2-2 and Legislative Joint Rule 15.03.
- 84 (6) The director of the division shall appoint a member of the advisory board as the
- 85 chair of the advisory board.
- 86 (7) The advisory board shall:
- 87 (a) meet quarterly, if needed; and
- 88 (b) may not meet more often than quarterly, unless requested by the director of the
- 89 division.

90 (8) The duties of the advisory board are to make recommendations to the division
91 relating to the website, including:

- 92 (a) the design and functionality of the website;
- 93 (b) proposed rules relating to the website; and
- 94 (c) records that should be required or permitted to be posted on the website.

95 Section 3. Section **63G-2-1001** is enacted to read:

96 **Part 10. Utah Public Records Website**

97 **63G-2-1001. Title.**

98 This part is known as "Utah Public Records Website."

99 Section 4. Section **63G-2-1002** is enacted to read:

100 **63G-2-1002. Definitions.**

101 As used in this part:

- 102 (1) "Advisory board" means the Utah Public Records Website Advisory Board, created
- 103 in Section 63A-12-110.
- 104 (2) "Department" means the Department of Technology Services.
- 105 (3) "Division" means the Division of Archives and Records Services.
- 106 (4) "Meeting" is as defined in Section 52-4-103.
- 107 (5) "Public body" is as defined in Section 52-4-103.

107a **H→ (6) "Restricted information" means:**

- 107b **(a) a private, protected, or controlled record;**
- 107c **(b) private, protected, or controlled information;**
- 107d **(c) a record or information that is protected from release by state law;**
- 107e **(d) a record or information that is protected from release by federal law or rule;**
- 107f **(e) a medical record; or**
- 107g **(f) medical information;**

108 ~~[(6)]~~ **(7) ←H "Website" means the Utah Public Records Website created under Section**
109 **63G-2-1003.**

110 Section 5. Section **63G-2-1003** is enacted to read:

111 **63G-2-1003. Utah Public Records Website.**

- 112 (1) The division shall, with the assistance of the department, establish and maintain the
- 113 Utah Public Records Website.
- 114 (2) The purpose of the website is to function as a central repository of public records,
- 115 of all government entities, as required by this part or by rule made under this part.
- 116 (3) Except as provided in Subsection (5)(b), (c), or (d), or by rule made under

117 Subsection 63G-2-1004(1)(b), on or after July 1, 2012, a government entity may, and beginning
118 on July 1, 2013, a government entity shall, post on the website all of the following records of
119 the government entity:
120 (a) ordinances;

- 121 (b) rules adopted by the governing body of a government entity ~~H→~~ **, unless the rules are**
 121a **posted on the website described in Subsection (6)(d)** ~~←H~~ ;
- 122 (c) policies adopted by the governing body of a government entity;
- 123 (d) statutorily required reports that do not contain ~~H→~~ **[information that is private;**
 123a **protected;**
 124 **or-controlled] restricted information** ~~←H~~ ;
- 125 (e) manuals that do not contain ~~H→~~ **[information that is private, protected, or controlled]**
 125a **restricted information** ~~←H~~ ;
- 126 (f) feasibility studies;
- 127 (g) approved minutes and agendas of public meetings;
- 128 (h) records circulated at all public portions of meetings;
- 129 (i) resolutions for the issuing of bonds or other obligations;
- 130 (j) except as provided in Subsection (4), records provided in response to a public
 131 records request made under this chapter;
- 132 (k) a record described in Subsection 63G-2-301 ~~H→~~ **[~~(c)~~] (3)** ~~←H~~ that contains
 132a information to
 133 which access may be restricted under Subsection 63G-2-201(3)(b) or Section 63G-2-302,
 134 63G-2-304, or 63G-2-305, if the information to which access may be restricted is already
 135 redacted from the record; and
- 136 (l) any other record series designated by the division under Section 63G-2-1004.
- 137 (4) A government entity is not required to post records described in Subsection (3)(j)
 138 if:
- 139 (a) (i) the records provided contain ~~H→~~ **restricted** ~~←H~~ information ~~H→~~ **[that is private;**
 139a **protected, or controlled]** ~~←H~~ ;
- 140 and
- 141 (ii) the ~~H→~~ **restricted** ~~←H~~ information ~~H→~~ **[described in Subsection (4)(a)(i)]** ~~←H~~ is
 141a provided to the requestor,
 142 because the person has an interest in the information that:
- 143 (A) is not held by the general public; or
- 144 (B) is not held by the general public to the extent that it is held by the requestor; or
- 145 (b) posting the records on the website would be unduly burdensome based on the
 146 format of the records or the expense required to post the records.
- 147 (5) (a) A record posted on the website:
- 148 (i) shall, to the extent possible, be posted in the original format of the record; or
- 149 (ii) if not posted in the original format of the record, may, to the extent possible, be
 150 posted in another format, approved by the division, that may be viewed and searched with
 151 software that is widely available to the public free of charge.

152 (b) A government entity is not required to post a record on the website if the record is
 153 posted on a website described in Subsection (6)(a) or (b).

154 (c) A government entity is not required to post a record or an archived streaming file
 155 on the website, or provide live streaming through the website, if:

156 (i) the government entity posts all records and archived streaming files, that the
 157 government entity is otherwise required to post on the website, on its own website;

158 (ii) the government entity provides all live streaming, that the government entity is
 159 otherwise required to provide through the website, on its own website; and

160 (iii) the government entity's website has the capability of searching for documents on
 161 its website.

162 (d) The division may, upon written request by a government entity, grant a temporary
 163 or limited exception to the government entity to a requirement of this part or a rule made under
 164 this part, if the exception is:

165 (i) necessary to avoid undue hardship to the government entity;

166 (ii) necessary to allow the government entity time to obtain or implement technology to
 167 comply with the requirement; or

168 (iii) otherwise necessary, as determined by the division.

169 (6) The website shall contain conspicuous links on the home page of the website to:

170 (a) the Utah Public Notice Website created in Section 63F-1-701;

171 (b) the Utah Public Finance Website, created in Section 63A-3-402;

172 (c) the open government resources page of the official website of the state executive
 173 branch; ~~H~~→ [and]

173a **(d) the website of the Division of Administrative Rules; and**

174 ~~(d)~~ (e) ←~~H~~ a page that contains links to:

175 (i) the official website of the Utah State Legislature;

176 (ii) the Utah data page of the official website of the state executive branch;

177 (iii) the Utah State Courts website;

178 (iv) the public legal notice website described in Section 45-1-101; and

179 (v) the websites of all government entities in Utah.

180 (7) The Department of Technology Services shall ensure that the website:

181 (a) is available and functioning;

182 (i) on or before July 1, 2012, to allow the public to listen to or view archived streaming

183 audio files and, where available, video files, that are uploaded to the website by a public body:

184 (A) voluntarily;

185 (B) as required under Subsection (8)(b); or

186 (C) as required by rule made under Section 63G-2-1004; and

187 (ii) on or before July 1, 2013, to allow the public to listen to or view live streaming

188 audio feeds and, where available, video feeds, of a public body through the website; and

189 (b) has an application programming interface that:

190 (i) allows other websites to link to records that are available on the website; and

191 (ii) to the extent practicable, allows other applications to make use of metadata in
192 records that are available on the website.

193 (8) (a) Beginning on July 1, 2012, a public body may upload to the website, archived
194 streaming audio or video files of the public portion of some or all meetings of the public body.

195 (b) Beginning on July 1, 2013:

196 (i) A county of the first or second class shall:

197 (A) provide live streaming audio or video, through the website, of the public portion of
198 all meetings of all public bodies of the county; and

199 (B) upload to the website archived streaming audio or video files of the public portion
200 of all meetings of all public bodies of the county that are held on or after July 1, 2013;

201 (ii) A city of the first or second class shall:

202 (A) provide live streaming audio or video, through the website, of the public portion of
203 all meetings of all public bodies of the city; and

204 (B) upload to the website archived streaming audio or video files of the public portion
205 of all meetings of all public bodies of the city that are held on or after July 1, 2013;

206 (iii) the State School Board shall:

207 (A) provide live streaming audio or video, through the website, of the public portion of
208 all meetings of the board; and

209 (B) upload to the website archived streaming audio or video files of the public portion
210 of all meetings of the board that are held on or after July 1, 2013;

211 (iv) a local school board shall:

212 (A) provide live streaming audio or video, through the website, of the public portion of
213 all meetings of the board; and

214 (B) upload to the website archived streaming audio or video files of the public portion
 215 of all meetings of the board that are held on or after July 1, 2013; and

216 (v) a public body, other than a public body described in Subsections (8)(b)(i) through
 217 (iv), may post archived streaming audio or video files on, or provide live streaming audio or
 218 video files through, the website of the public portion of some or all of the meetings of the
 219 public body, unless the division, by rule, makes it mandatory for the public body to post the
 220 audio or video files on, or provide the live streaming audio or video through, the website.

221 (9) The division shall establish, by rule, a retention schedule that specifies when a
 222 record is permitted to be removed from the website.

223 (10) (a) A government entity is not required to post a record on the website if the
 224 record was created before the later of:

225 (i) July 1, 2013; or

226 (ii) the day on which the government entity is required to post the record on the
 227 website.

228 (b) Notwithstanding Subsection (10)(a), a government entity is required to post on the
 229 website, the most current version of a record described in Subsections (3)(a) through (c).

230 (11) Nothing in this part is intended to require a government entity to post ~~H~~→ [a private,
 231 protected, or controlled record] restricted information ←H on the website.

232 (12) The posting, by a government entity, of a record on the website qualifies as
 233 retention of the record by the government entity for the period of time during which the record
 234 is posted on the website.

235 (13) This part does not apply to a government entity with an annual budget of less than
 236 \$1,000,000, except to the extent that this limitation amount is reduced by the division, by rule,
 237 after consultation with the advisory board.

238 (14) The division or the Department of Technology Services may assist a government
 239 entity to come into compliance with the requirements of this part or a rule made under this part.

240 Section 6. Section **63G-2-1004** is enacted to read:

241 **63G-2-1004. Rulemaking authority of division.**

242 (1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
 243 Administrative Rulemaking Act, that:

244 (a) establish procedures and related requirements for posting information on the

245 website;

246 (b) establish a time frame for differing types and sizes of government entities to come
 247 into full compliance with the requirements of this part and rules made under this part; and

248 (c) designate records series, in addition to the records series described in Subsections
 249 63G-2-1003(3)(a) through (k), that are clearly public in nature, as a record series that is
 250 required to be posted on the website by a government entity.

251 (2) The division may, by rule, require a government entity to post land use plans on the
 252 website, including development plans, zoning plans, and comprehensive plans.

253 (3) The division may not make rules that require a government entity to post ~~H→~~ [a private;
 254 protected, or controlled record] restricted information ←H on the website.

255 (4) The division shall present all proposed rules made under this part to the
 256 Administrative Rules Review Committee, created in Section 63G-3-501.

256a **H→ Section 7. Section 63G-2-1005 is enacted to read:**

256b **63G-2-1005. Limitations on posting.**

256c **Notwithstanding any provision of this part, or rules made under this part, a**
 256d **government entity is not required to, and may not be required to:**

256e **(1) redact restricted information from a record in order to require the record to be, or**
 256f **make the record eligible to be, posted on the website; or**

256g **(2) post a record on the website that contains restricted information. ←H**

Legislative Review Note
 as of 2-21-12 11:19 AM

Office of Legislative Research and General Counsel