

**EXPUNGEMENT OF ADMINISTRATIVE ACTION**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brian M. Greene**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the treatment of agency records, including providing for the administrative expungement of agency records under certain circumstances.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
  - ▶ provides that agency records may be classified as protected under certain circumstances;
  - ▶ provides that an individual may apply for administrative expungement of records related to disciplinary action previously taken by an agency against the individual under certain circumstances, including that the individual:
    - has had no additional disciplinary action for a certain period of time; and
    - has fully complied with agency requirements regarding previous disciplinary action;
  - ▶ describes the application and fee requirements for seeking the administrative expungement of agency records related to action taken by the agency;
  - ▶ provides that records expunged under this legislation may still be used internally by the agency, shared with law enforcement, the courts, and as directed by court order;
- and
- ▶ makes technical changes.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **63G-2-305**, as last amended by Laws of Utah 2014, Chapters 90 and 320

35 **63G-4-102**, as last amended by Laws of Utah 2012, Chapter 333

36 ENACTS:

37 **63G-4-701**, Utah Code Annotated 1953

38 **63G-4-702**, Utah Code Annotated 1953

39 **63G-4-703**, Utah Code Annotated 1953



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

42 Section 1. Section **63G-2-305** is amended to read:

43 **63G-2-305. Protected records.**

44 The following records are protected if properly classified by a governmental entity:

45 (1) trade secrets as defined in Section **13-24-2** if the person submitting the trade secret  
46 has provided the governmental entity with the information specified in Section **63G-2-309**;

47 (2) commercial information or nonindividual financial information obtained from a  
48 person if:

49 (a) disclosure of the information could reasonably be expected to result in unfair  
50 competitive injury to the person submitting the information or would impair the ability of the  
51 governmental entity to obtain necessary information in the future;

52 (b) the person submitting the information has a greater interest in prohibiting access  
53 than the public in obtaining access; and

54 (c) the person submitting the information has provided the governmental entity with  
55 the information specified in Section **63G-2-309**;

56 (3) commercial or financial information acquired or prepared by a governmental entity  
57 to the extent that disclosure would lead to financial speculations in currencies, securities, or  
58 commodities that will interfere with a planned transaction by the governmental entity or cause

59 substantial financial injury to the governmental entity or state economy;

60 (4) records, the disclosure of which could cause commercial injury to, or confer a  
61 competitive advantage upon a potential or actual competitor of, a commercial project entity as  
62 defined in Subsection 11-13-103(4);

63 (5) test questions and answers to be used in future license, certification, registration,  
64 employment, or academic examinations;

65 (6) records, the disclosure of which would impair governmental procurement  
66 proceedings or give an unfair advantage to any person proposing to enter into a contract or  
67 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this  
68 Subsection (6) does not restrict the right of a person to have access to, after the contract or  
69 grant has been awarded and signed by all parties, a bid, proposal, application, or other  
70 information submitted to or by a governmental entity in response to:

71 (a) an invitation for bids;

72 (b) a request for proposals;

73 (c) a request for quotes;

74 (d) a grant; or

75 (e) other similar document;

76 (7) information submitted to or by a governmental entity in response to a request for  
77 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict  
78 the right of a person to have access to the information, after:

79 (a) a contract directly relating to the subject of the request for information has been  
80 awarded and signed by all parties; or

81 (b) (i) a final determination is made not to enter into a contract that relates to the  
82 subject of the request for information; and

83 (ii) at least two years have passed after the day on which the request for information is  
84 issued;

85 (8) records that would identify real property or the appraisal or estimated value of real  
86 or personal property, including intellectual property, under consideration for public acquisition  
87 before any rights to the property are acquired unless:

88 (a) public interest in obtaining access to the information is greater than or equal to the  
89 governmental entity's need to acquire the property on the best terms possible;

90 (b) the information has already been disclosed to persons not employed by or under a  
91 duty of confidentiality to the entity;

92 (c) in the case of records that would identify property, potential sellers of the described  
93 property have already learned of the governmental entity's plans to acquire the property;

94 (d) in the case of records that would identify the appraisal or estimated value of  
95 property, the potential sellers have already learned of the governmental entity's estimated value  
96 of the property; or

97 (e) the property under consideration for public acquisition is a single family residence  
98 and the governmental entity seeking to acquire the property has initiated negotiations to acquire  
99 the property as required under Section [78B-6-505](#);

100 (9) records prepared in contemplation of sale, exchange, lease, rental, or other  
101 compensated transaction of real or personal property including intellectual property, which, if  
102 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value  
103 of the subject property, unless:

104 (a) the public interest in access is greater than or equal to the interests in restricting  
105 access, including the governmental entity's interest in maximizing the financial benefit of the  
106 transaction; or

107 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of  
108 the value of the subject property have already been disclosed to persons not employed by or  
109 under a duty of confidentiality to the entity;

110 (10) records created or maintained for civil, criminal, or administrative enforcement  
111 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if  
112 release of the records:

113 (a) reasonably could be expected to interfere with investigations undertaken for  
114 enforcement, discipline, licensing, certification, or registration purposes;

115 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement  
116 proceedings;

117 (c) would create a danger of depriving a person of a right to a fair trial or impartial  
118 hearing;

119 (d) reasonably could be expected to disclose the identity of a source who is not  
120 generally known outside of government and, in the case of a record compiled in the course of

121 an investigation, disclose information furnished by a source not generally known outside of  
122 government if disclosure would compromise the source; or

123 (e) reasonably could be expected to disclose investigative or audit techniques,  
124 procedures, policies, or orders not generally known outside of government if disclosure would  
125 interfere with enforcement or audit efforts;

126 (11) records the disclosure of which would jeopardize the life or safety of an  
127 individual;

128 (12) records the disclosure of which would jeopardize the security of governmental  
129 property, governmental programs, or governmental recordkeeping systems from damage, theft,  
130 or other appropriation or use contrary to law or public policy;

131 (13) records that, if disclosed, would jeopardize the security or safety of a correctional  
132 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere  
133 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

134 (14) records that, if disclosed, would reveal recommendations made to the Board of  
135 Pardons and Parole by an employee of or contractor for the Department of Corrections, the  
136 Board of Pardons and Parole, or the Department of Human Services that are based on the  
137 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's  
138 jurisdiction;

139 (15) records and audit workpapers that identify audit, collection, and operational  
140 procedures and methods used by the State Tax Commission, if disclosure would interfere with  
141 audits or collections;

142 (16) records of a governmental audit agency relating to an ongoing or planned audit  
143 until the final audit is released;

144 (17) records that are subject to the attorney client privilege;

145 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,  
146 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,  
147 quasi-judicial, or administrative proceeding;

148 (19) (a) (i) personal files of a state legislator, including personal correspondence to or  
149 from a member of the Legislature; and

150 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of  
151 legislative action or policy may not be classified as protected under this section; and

152 (b) (i) an internal communication that is part of the deliberative process in connection  
153 with the preparation of legislation between:

154 (A) members of a legislative body;

155 (B) a member of a legislative body and a member of the legislative body's staff; or

156 (C) members of a legislative body's staff; and

157 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of  
158 legislative action or policy may not be classified as protected under this section;

159 (20) (a) records in the custody or control of the Office of Legislative Research and  
160 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated  
161 legislation or contemplated course of action before the legislator has elected to support the  
162 legislation or course of action, or made the legislation or course of action public; and

163 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the  
164 Office of Legislative Research and General Counsel is a public document unless a legislator  
165 asks that the records requesting the legislation be maintained as protected records until such  
166 time as the legislator elects to make the legislation or course of action public;

167 (21) research requests from legislators to the Office of Legislative Research and  
168 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared  
169 in response to these requests;

170 (22) drafts, unless otherwise classified as public;

171 (23) records concerning a governmental entity's strategy about:

172 (a) collective bargaining; or

173 (b) imminent or pending litigation;

174 (24) records of investigations of loss occurrences and analyses of loss occurrences that  
175 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the  
176 Uninsured Employers' Fund, or similar divisions in other governmental entities;

177 (25) records, other than personnel evaluations, that contain a personal recommendation  
178 concerning an individual if disclosure would constitute a clearly unwarranted invasion of  
179 personal privacy, or disclosure is not in the public interest;

180 (26) records that reveal the location of historic, prehistoric, paleontological, or  
181 biological resources that if known would jeopardize the security of those resources or of  
182 valuable historic, scientific, educational, or cultural information;

183 (27) records of independent state agencies if the disclosure of the records would  
184 conflict with the fiduciary obligations of the agency;

185 (28) records of an institution within the state system of higher education defined in  
186 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,  
187 retention decisions, and promotions, which could be properly discussed in a meeting closed in  
188 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of  
189 the final decisions about tenure, appointments, retention, promotions, or those students  
190 admitted, may not be classified as protected under this section;

191 (29) records of the governor's office, including budget recommendations, legislative  
192 proposals, and policy statements, that if disclosed would reveal the governor's contemplated  
193 policies or contemplated courses of action before the governor has implemented or rejected  
194 those policies or courses of action or made them public;

195 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,  
196 revenue estimates, and fiscal notes of proposed legislation before issuance of the final  
197 recommendations in these areas;

198 (31) records provided by the United States or by a government entity outside the state  
199 that are given to the governmental entity with a requirement that they be managed as protected  
200 records if the providing entity certifies that the record would not be subject to public disclosure  
201 if retained by it;

202 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body  
203 except as provided in Section 52-4-206;

204 (33) records that would reveal the contents of settlement negotiations but not including  
205 final settlements or empirical data to the extent that they are not otherwise exempt from  
206 disclosure;

207 (34) memoranda prepared by staff and used in the decision-making process by an  
208 administrative law judge, a member of the Board of Pardons and Parole, or a member of any  
209 other body charged by law with performing a quasi-judicial function;

210 (35) records that would reveal negotiations regarding assistance or incentives offered  
211 by or requested from a governmental entity for the purpose of encouraging a person to expand  
212 or locate a business in Utah, but only if disclosure would result in actual economic harm to the  
213 person or place the governmental entity at a competitive disadvantage, but this section may not

214 be used to restrict access to a record evidencing a final contract;

215 (36) materials to which access must be limited for purposes of securing or maintaining  
216 the governmental entity's proprietary protection of intellectual property rights including patents,  
217 copyrights, and trade secrets;

218 (37) the name of a donor or a prospective donor to a governmental entity, including an  
219 institution within the state system of higher education defined in Section 53B-1-102, and other  
220 information concerning the donation that could reasonably be expected to reveal the identity of  
221 the donor, provided that:

222 (a) the donor requests anonymity in writing;

223 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be  
224 classified protected by the governmental entity under this Subsection (37); and

225 (c) except for an institution within the state system of higher education defined in  
226 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged  
227 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority  
228 over the donor, a member of the donor's immediate family, or any entity owned or controlled  
229 by the donor or the donor's immediate family;

230 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and  
231 73-18-13;

232 (39) a notification of workers' compensation insurance coverage described in Section  
233 34A-2-205;

234 (40) (a) the following records of an institution within the state system of higher  
235 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,  
236 or received by or on behalf of faculty, staff, employees, or students of the institution:

237 (i) unpublished lecture notes;

238 (ii) unpublished notes, data, and information:

239 (A) relating to research; and

240 (B) of:

241 (I) the institution within the state system of higher education defined in Section  
242 53B-1-102; or

243 (II) a sponsor of sponsored research;

244 (iii) unpublished manuscripts;



- 245 (iv) creative works in process;
- 246 (v) scholarly correspondence; and
- 247 (vi) confidential information contained in research proposals;
- 248 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public  
249 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
- 250 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 251 (41) (a) records in the custody or control of the Office of Legislative Auditor General  
252 that would reveal the name of a particular legislator who requests a legislative audit prior to the  
253 date that audit is completed and made public; and
- 254 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the  
255 Office of the Legislative Auditor General is a public document unless the legislator asks that  
256 the records in the custody or control of the Office of Legislative Auditor General that would  
257 reveal the name of a particular legislator who requests a legislative audit be maintained as  
258 protected records until the audit is completed and made public;
- 259 (42) records that provide detail as to the location of an explosive, including a map or  
260 other document that indicates the location of:
- 261 (a) a production facility; or
- 262 (b) a magazine;
- 263 (43) information:
- 264 (a) contained in the statewide database of the Division of Aging and Adult Services  
265 created by Section 62A-3-311.1; or
- 266 (b) received or maintained in relation to the Identity Theft Reporting Information  
267 System (IRIS) established under Section 67-5-22;
- 268 (44) information contained in the Management Information System and Licensing  
269 Information System described in Title 62A, Chapter 4a, Child and Family Services;
- 270 (45) information regarding National Guard operations or activities in support of the  
271 National Guard's federal mission;
- 272 (46) records provided by any pawn or secondhand business to a law enforcement  
273 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and  
274 Secondhand Merchandise Transaction Information Act;
- 275 (47) information regarding food security, risk, and vulnerability assessments performed

276 by the Department of Agriculture and Food;

277 (48) except to the extent that the record is exempt from this chapter pursuant to Section  
278 [63G-2-106](#), records related to an emergency plan or program, a copy of which is provided to or  
279 prepared or maintained by the Division of Emergency Management, and the disclosure of  
280 which would jeopardize:

281 (a) the safety of the general public; or

282 (b) the security of:

283 (i) governmental property;

284 (ii) governmental programs; or

285 (iii) the property of a private person who provides the Division of Emergency  
286 Management information;

287 (49) records of the Department of Agriculture and Food that provides for the  
288 identification, tracing, or control of livestock diseases, including any program established under  
289 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act or Title 4, Chapter 31, Control  
290 of Animal Disease;

291 (50) as provided in Section [26-39-501](#):

292 (a) information or records held by the Department of Health related to a complaint  
293 regarding a child care program or residential child care which the department is unable to  
294 substantiate; and

295 (b) information or records related to a complaint received by the Department of Health  
296 from an anonymous complainant regarding a child care program or residential child care;

297 (51) unless otherwise classified as public under Section [63G-2-301](#) and except as  
298 provided under Section [41-1a-116](#), an individual's home address, home telephone number, or  
299 personal mobile phone number, if:

300 (a) the individual is required to provide the information in order to comply with a law,  
301 ordinance, rule, or order of a government entity; and

302 (b) the subject of the record has a reasonable expectation that this information will be  
303 kept confidential due to:

304 (i) the nature of the law, ordinance, rule, or order; and

305 (ii) the individual complying with the law, ordinance, rule, or order;

306 (52) the name, home address, work addresses, and telephone numbers of an individual

307 that is engaged in, or that provides goods or services for, medical or scientific research that is:

308 (a) conducted within the state system of higher education, as defined in Section

309 [53B-1-102](#); and

310 (b) conducted using animals;

311 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement  
312 Private Proposal Program, to the extent not made public by rules made under that chapter;

313 (54) in accordance with Section [78A-12-203](#), any record of the Judicial Performance

314 Evaluation Commission concerning an individual commissioner's vote on whether or not to

315 recommend that the voters retain a judge;

316 (55) information collected and a report prepared by the Judicial Performance

317 Evaluation Commission concerning a judge, unless Section [20A-7-702](#) or Title 78A, Chapter

318 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,

319 the information or report;

320 (56) records contained in the Management Information System created in Section

321 [62A-4a-1003](#);

322 (57) records provided or received by the Public Lands Policy Coordinating Office in

323 furtherance of any contract or other agreement made in accordance with Section [63J-4-603](#);

324 (58) information requested by and provided to the Utah [State] 911 Committee under

325 Section [63H-7-303](#);

326 (59) in accordance with Section [73-10-33](#):

327 (a) a management plan for a water conveyance facility in the possession of the Division  
328 of Water Resources or the Board of Water Resources; or

329 (b) an outline of an emergency response plan in possession of the state or a county or  
330 municipality;

331 (60) the following records in the custody or control of the Office of Inspector General  
332 of Medicaid Services, created in Section [63A-13-201](#):

333 (a) records that would disclose information relating to allegations of personal

334 misconduct, gross mismanagement, or illegal activity of a person if the information or

335 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services

336 through other documents or evidence, and the records relating to the allegation are not relied

337 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation

338 report or final audit report;

339 (b) records and audit workpapers to the extent they would disclose the identity of a  
340 person who, during the course of an investigation or audit, communicated the existence of any  
341 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or  
342 regulation adopted under the laws of this state, a political subdivision of the state, or any  
343 recognized entity of the United States, if the information was disclosed on the condition that  
344 the identity of the person be protected;

345 (c) before the time that an investigation or audit is completed and the final  
346 investigation or final audit report is released, records or drafts circulated to a person who is not  
347 an employee or head of a governmental entity for the person's response or information;

348 (d) records that would disclose an outline or part of any investigation, audit survey  
349 plan, or audit program; or

350 (e) requests for an investigation or audit, if disclosure would risk circumvention of an  
351 investigation or audit;

352 (61) records that reveal methods used by the Office of Inspector General of Medicaid  
353 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or  
354 abuse;

355 (62) information provided to the Department of Health or the Division of Occupational  
356 and Professional Licensing under Subsection 58-68-304(3) or (4);

357 (63) a record described in Section 63G-12-210; ~~and~~

358 (64) captured plate data that is obtained through an automatic license plate reader  
359 system used by a governmental entity as authorized in Section 41-6a-2003[-]; and

360 (65) records created or maintained for an investigation of an individual, if the records  
361 were created or maintained as the result of a complaint and the governmental entity determines  
362 the investigated individual has not committed a legal violation.

363 Section 2. Section 63G-4-102 is amended to read:

364 **63G-4-102. Scope and applicability of chapter.**

365 (1) Except as set forth in Subsection (2), and except as otherwise provided by a statute  
366 superseding provisions of this chapter by explicit reference to this chapter, the provisions of  
367 this chapter apply to every agency of the state and govern:

368 (a) state agency action that determines the legal rights, duties, privileges, immunities,

369 or other legal interests of an identifiable person, including agency action to grant, deny, revoke,  
370 suspend, modify, annul, withdraw, or amend an authority, right, or license; and

371 (b) judicial review of the action.

372 (2) This chapter does not govern:

373 (a) the procedure for making agency rules, or judicial review of the procedure or rules;

374 (b) the issuance of a notice of a deficiency in the payment of a tax, the decision to  
375 waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the  
376 issuance of a tax assessment, except that this chapter governs an agency action commenced by  
377 a taxpayer or by another person authorized by law to contest the validity or correctness of the  
378 action;

379 (c) state agency action relating to extradition, to the granting of a pardon or parole, a  
380 commutation or termination of a sentence, or to the rescission, termination, or revocation of  
381 parole or probation, to the discipline of, resolution of a grievance of, supervision of,  
382 confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah  
383 State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction  
384 of the Division of Substance Abuse and Mental Health, or a person on probation or parole, or  
385 judicial review of the action;

386 (d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a  
387 student or teacher in a school or educational institution, or judicial review of the action;

388 (e) an application for employment and internal personnel action within an agency  
389 concerning its own employees, or judicial review of the action;

390 (f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah  
391 Occupational Safety and Health Act, and Title 58, Occupations and Professions, except that  
392 this chapter governs an agency action commenced by the employer, licensee, or other person  
393 authorized by law to contest the validity or correctness of the citation or assessment;

394 (g) state agency action relating to management of state funds, the management and  
395 disposal of school and institutional trust land assets, and contracts for the purchase or sale of  
396 products, real property, supplies, goods, or services by or for the state, or by or for an agency of  
397 the state, except as provided in those contracts, or judicial review of the action;

398 (h) state agency action under Title 7, Chapter 1, Part 3, Powers and Duties of  
399 Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution

400 by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or  
401 Holding Companies, and Title 63G, Chapter 7, Governmental Immunity Act of Utah, or  
402 judicial review of the action;

403 (i) the initial determination of a person's eligibility for unemployment benefits, the  
404 initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers'  
405 Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial  
406 determination of a person's unemployment tax liability;

407 (j) state agency action relating to the distribution or award of a monetary grant to or  
408 between governmental units, or for research, development, or the arts, or judicial review of the  
409 action;

410 (k) the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah  
411 Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19,  
412 Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19,  
413 Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act,  
414 Title 19, Chapter 6, Part 4, Underground Storage Tank Act, [or] Title 19, Chapter 6, Part 7,  
415 Used Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act,  
416 except that this chapter governs an agency action commenced by a person authorized by law to  
417 contest the validity or correctness of the notice or order;

418 (l) state agency action, to the extent required by federal statute or regulation, to be  
419 conducted according to federal procedures;

420 (m) the initial determination of a person's eligibility for government or public  
421 assistance benefits;

422 (n) state agency action relating to wildlife licenses, permits, tags, and certificates of  
423 registration;

424 (o) a license for use of state recreational facilities;

425 (p) state agency action under Title 63G, Chapter 2, Government Records Access and  
426 Management Act, except as provided in [Section] Sections 63G-2-603 and 63G-4-703;

427 (q) state agency action relating to the collection of water commissioner fees and  
428 delinquency penalties, or judicial review of the action;

429 (r) state agency action relating to the installation, maintenance, and repair of headgates,  
430 caps, valves, or other water controlling works and weirs, flumes, meters, or other water

431 measuring devices, or judicial review of the action;

432 (s) the issuance and enforcement of an initial order under Section 73-2-25;

433 (t) (i) a hearing conducted by the Division of Securities under Section 61-1-11.1; and

434 (ii) an action taken by the Division of Securities pursuant to a hearing conducted under  
435 Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange  
436 of securities described in Subsection 61-1-11.1(1); and

437 (u) state agency action relating to water well driller licenses, water well drilling  
438 permits, water well driller registration, or water well drilling construction standards, or judicial  
439 review of the action.

440 (3) This chapter does not affect a legal remedy otherwise available to:

441 (a) compel an agency to take action; or

442 (b) challenge an agency's rule.

443 (4) This chapter does not preclude an agency, prior to the beginning of an adjudicative  
444 proceeding, or the presiding officer during an adjudicative proceeding from:

445 (a) requesting or ordering a conference with parties and interested persons to:

446 (i) encourage settlement;

447 (ii) clarify the issues;

448 (iii) simplify the evidence;

449 (iv) facilitate discovery; or

450 (v) expedite the proceeding; or

451 (b) granting a timely motion to dismiss or for summary judgment if the requirements of  
452 Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party,  
453 except to the extent that the requirements of those rules are modified by this chapter.

454 (5) (a) A declaratory proceeding authorized by Section 63G-4-503 is not governed by  
455 this chapter, except as explicitly provided in that section.

456 (b) Judicial review of a declaratory proceeding authorized by Section 63G-4-503 is  
457 governed by this chapter.

458 (6) This chapter does not preclude an agency from enacting a rule affecting or  
459 governing an adjudicative proceeding or from following the rule, if the rule is enacted  
460 according to the procedures outlined in Title 63G, Chapter 3, Utah Administrative Rulemaking  
461 Act, and if the rule conforms to the requirements of this chapter.

462 (7) (a) If the attorney general issues a written determination that a provision of this  
463 chapter would result in the denial of funds or services to an agency of the state from the federal  
464 government, the applicability of the provision to that agency shall be suspended to the extent  
465 necessary to prevent the denial.

466 (b) The attorney general shall report the suspension to the Legislature at its next  
467 session.

468 (8) Nothing in this chapter may be interpreted to provide an independent basis for  
469 jurisdiction to review final agency action.

470 (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good  
471 cause shown, from lengthening or shortening a time period prescribed in this chapter, except  
472 the time period established for judicial review.

473 (10) Notwithstanding any other provision of this section, this chapter does not apply to  
474 a permit review adjudicative proceeding, as defined in Section 19-1-301.5, except to the extent  
475 expressly provided in Section 19-1-301.5.

476 Section 3. Section 63G-4-701 is enacted to read:

477 **Part 7. Expungement of Administrative Disciplinary Action**

478 **63G-4-701. Title -- Relationship to Utah Expungement Act.**

479 (1) This part is known as the "Expungement of Administrative Disciplinary Action."

480 (2) The provisions of this part do not affect or supercede the expungement of a record  
481 under Title 77, Chapter 40, Utah Expungement Act.

482 Section 4. Section 63G-4-702 is enacted to read:

483 **63G-4-702. Definitions.**

484 As used in this part:

485 (1) "Administrative expungement" or "expunge" means to prevent public access,  
486 including through a website or other electronic means, to agency records regarding the agency's  
487 disciplinary action against an eligible petitioner.

488 (2) (a) "Disciplinary action" means, subject to the limitations described in Section  
489 63G-4-102, state agency action against the interest of an individual that affects a legal right,  
490 duty, privilege, immunity, or other legal interest of an individual, including agency action to  
491 deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license.

492 (b) "Disciplinary action" does not include an investigation, detention, or conviction by



493 law enforcement or a court.

494 (3) "Eligible petitioner" means an individual who was previously the subject of  
495 disciplinary action by an agency but who has:

496 (a) not been the subject of disciplinary action during the preceding three years; and

497 (b) fully complied with agency requirements regarding previous disciplinary action.

498 (4) "Qualifying record" means a record of an agency regarding disciplinary action that  
499 was a final agency action at least three years before an eligible petitioner applies to the agency  
500 for expungement of the record under this part.

501 Section 5. Section **63G-4-703** is enacted to read:

502 **63G-4-703. Expungement of disciplinary action.**

503 (1) Notwithstanding any conflicting provisions of Title 63G, Chapter 2, Government  
504 Records Access and Management Act, and except as provided in Subsection (2), within 30  
505 days after the day on which an agency receives an application for administrative expungement  
506 from an eligible petitioner, the agency shall expunge the qualifying record of the eligible  
507 petitioner if:

508 (a) the petitioner applies to the agency for administrative expungement in a form  
509 established by agency rule in accordance with Title 63G, Chapter 3, Utah Administrative  
510 Rulemaking Act; and

511 (b) the petitioner pays an application fee determined by the agency under Section  
512 [63J-1-504](#).

513 (2) Within 30 days after the day on which an agency receives an application for  
514 administrative expungement, the agency head, or the agency head's designee, may deny the  
515 application if:

516 (a) the petitioner filing the application is not an eligible petitioner;

517 (b) the record identified for administrative expungement is not a qualifying record;

518 (c) the petitioner provides false information on the application;

519 (d) the record for which administrative expungement is sought relates to criminal  
520 conduct that resulted in a conviction that has not been expunged in accordance with Title 77,  
521 Chapter 40, Utah Expungement Act; or

522 (e) the agency head, or the agency head's designee, after weighing the public's interest  
523 against the petitioner's right to privacy, determines that administrative expungement would

524 unreasonably endanger the health or safety of the public.

525 (3) If the agency head or the agency head's designee denies an application for  
526 administrative expungement under Subsection (2), the agency shall provide a written  
527 explanation of the denial to the petitioner.

528 (4) If the agency does not provide a written explanation of a denial or otherwise  
529 respond to a petitioner within 30 days after the day on which the agency receives an application  
530 for administrative expungement, the agency shall expunge the qualifying record of an eligible  
531 petitioner.

532 (5) An eligible petitioner whose application for administrative expungement is denied  
533 as described in Subsection (2) may seek judicial review of the decision in accordance with  
534 Section [63G-4-401](#).

535 (6) Notwithstanding the provisions of this part, a record expunged under this part may  
536 be:

537 (a) used internally by the agency;

538 (b) shared by the agency with law enforcement or a court;

539 (c) shared by the agency with another agency if that agency agrees to prevent public  
540 access to the record; and

541 (d) distributed by the agency as directed by court order.

542 (7) Within three years after the administrative expungement of a record under this part,  
543 the agency head, or the agency head's designee, may rescind the administrative expungement of  
544 an expunged record if:

545 (a) an additional and final record of disciplinary action is entered against the eligible  
546 petitioner; or

547 (b) the agency determines that material information provided in the petitioner's  
548 application for administrative expungement was false.

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**Legislative Review Note**  
as of 1-9-15 11:11 AM

**Office of Legislative Research and General Counsel**