

## House Government Operations Committee

3/3/2025

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### **Bill: 2<sup>nd</sup> Substitute SB 277 – Government Records Management Amendments**

Sponsor: Senator Micheal K. McKell

Floor Sponsor: Representative Jefferson Moss

#### **UASD Position: Tracking**

This Bill creates the Government Records Office (the Office) within the Division of Archives and Records Service (the Division), and replaces the State Records Committee (the Committee) with the director of the office, who is an attorney with knowledge and experience relating to government records law and makes other changes relating to government records.

Discussion: Senator McKell introduced the 3rd substitute for SB 277, which was adopted by the Committee. This latest version incorporates several significant modifications. Notably, it adds a coordination clause to address potential conflicts between SB 277 and Senate Bill 163 - Government Records Amendments. This addition ensures that the provisions of SB 163 align seamlessly with the changes proposed in SB 277, particularly concerning the replacement of the State Records Committee with the Director of the Government Records Office. Furthermore, the 3rd substitute includes technical and conforming amendments to various sections of the Utah Code, aiming to enhance consistency and clarity across related statutes.

The Bill establishes the Government Records Office within the Division of Archives and Records Service and delineates its functions. It mandates that the Governor appoint the Office Director in consultation with the Department's Executive Director and with the Senate's advice and consent. The Bill specifies the Director's term, qualifications, and responsibilities. It also dissolves the existing State Records Committee, transferring its duties, including the authority to decide appeals under the Government Records Access and Management Act ("GRAMA"), to the newly appointed Director.

Additionally, the Bill designates the Government Records Ombudsman as an employee of the new Office and grants rulemaking authority to the Director. It outlines a transition plan from the committee-based system to the director-led Office and requires individuals in executive branch management positions to adhere to record amendment and retention policies established by the Governor.

Senator McKell highlighted that the current statute provides two avenues for appealing records decisions: through the State Records Committee and the courts. However, inconsistencies within the Committee and findings from a recent audit indicating slow processes have necessitated these reforms. The Bill does not eliminate the balancing test but stipulates that Committee members possess a legal background with records experience and undergo substantial training. The overarching goal of the Bill is to improve the efficiency of records requests.

The Commissioner of Higher Education, the Division of Risk Management of Utah, and the Utah League of Cities and Towns expressed support for the Bill.

Yeas: 9  
Nays: 2  
N/V: 2

**Outcome: 2<sup>nd</sup> Substitute 277 passed out of the Committee with a favorable recommendation.**

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**Bill: 2<sup>nd</sup> Substitute SB 164 – Modifications to Election Law**

Sponsor: Senator Wayne A. Harper

Floor Sponsor: Representative Paul A. Cutler

**UASD Position: Tracking**

This Bill modifies provisions relating to elections

Discussion: Senator Harper presented the 2nd substitute, which was adopted by the Committee. He explained that the Bill implements recommendations from the Legislative Auditor General to improve the integrity and transparency of the electoral process.

The Bill requires county clerks to collaborate with local post offices to ensure ballots are stamped in a timely manner. It also addresses issues in the candidate petition process by allowing poll watchers to observe the signature-verification process, similar to county ballots, while prohibiting them from disclosing certain observed information. Candidates and their campaign representatives may access complete, unredacted signature packets related to their election race. Regular audits of at least 1% of all signatures will be required, and counties may count up to 110% of the required signatures to account for verification issues. Additionally, a website will allow voters to track petitions they have signed and remove their signatures within a designated period. The Bill establishes clear protocols for submitting, maintaining the chain of custody, and storing signature packets. It also grants rulemaking authority to the Director of Elections within the Office of the Lieutenant Governor.

During the discussion, Representative Fiefia asked how the new process would prevent voter intimidation. The Director of Elections explained that photographs of signatures would be prohibited. Representative Fiefia further expressed concerns about voter retribution, where individuals might pressure signers to remove their signatures. The sponsor referred to pages eight and nine of the Bill, which include provisions ensuring voter privacy while maintaining transparency. The Director added that signatures could only be removed within three days of signing a petition.

Representative Cutler inquired about the timeline for viewing signature packets. The Director clarified that poll watchers could observe the process at any time, and depending on the race, the state or county chair would have access to the unredacted packets until the ballot is certified for the primary election. The sponsor also outlined a process clarifying how and by whom the packets must be submitted. Representative MacPherson asked about enforcement mechanisms, to which the sponsor responded that current statute already includes enforcement measures, and these will remain unchanged under the Bill.

The Utah Association of Counties voiced support for the Bill, while members of the public raised concerns about the signature-gathering process.

Yeas: 12

Nays: 0

N/V: 1

**Outcome: 2<sup>nd</sup> Substitute SB 164 passed out of the Committee with a favorable recommendation.**

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**Bill: 1<sup>st</sup> Substitute SB 154 – Legislative Audit Amendments**

Sponsor: Senator Brady Brammer

Floor Sponsor: Representative Jordan D. Teuscher

**UASD Position: Oppose**

This Bill enacts provisions related to certain information provided to the legislative auditor general.

Discussion: Senator Brammer presented the Bill, raising concerns about transparency within the Attorney General's Office. He explained that the Bill clarifies and strengthens the authority of the Legislative Auditor General while addressing how privileged information is handled during audits. Specifically, it excludes certain information provided to the Legislative Auditor General from being classified as a record and allows entities to share privileged items with the auditor. If an entity withholds such items, it must explicitly assert a privilege. The Bill also enables the Legislative Auditor General to contest privilege claims and, in some cases, requires disputed privileged items to be submitted to an arbitrator for resolution. Additionally, the Bill aligns with SJR 4 - Joint Resolution Amending Court Rules on Attorney Confidentiality to ensure consistency in legal standards.

The sponsor highlighted that the Bill addresses Article VI, Section 33 of the State Constitution, which defines the constitutional powers and duties of the Legislative Auditor General. The Auditor General is appointed by and reports solely to the Legislature. He explained that the misuse of privilege claims has obstructed the auditing process, particularly in a recent audit of the Attorney General's Office and special project entities, raising significant transparency concerns. The sponsor argued that privilege claims should not be used to block legislative oversight and emphasized that the Legislature should have the authority to resolve these disputes. To address these concerns, the third substitute introduces a process in which a neutral third-party arbitrator conducts expedited reviews of privilege claims. The sponsor stressed that the goal of the Bill is to improve transparency and accountability in government audits by preventing privilege claims from unnecessarily delaying or obstructing the auditing process. The Director of the Office of the Legislative Auditor General ("Office") joined the sponsor in presenting the Bill.

During the discussion, Representative Burton asked how the arbitrator would be selected. The sponsor explained that the Office must appoint an arbitrator who is licensed to practice law in Utah and has no known, direct, or material interest in the arbitration's outcome. The arbitrator

must also have no existing, substantial relationship with the entity being audited or with the Office, aside from their selection for the role.

Representative Cutler raised concerns that a future Legislative Auditor General could misuse the process if the Auditor selects and pays the arbitrator. The sponsor responded that the intent of the Bill is to discourage entities from making unwarranted privilege claims. He then requested the adoption of House Amendment 4, which specifies on lines 166-167 that the arbitrator must determine whether the entity has a valid privilege claim, favoring access to non-privileged material for the Legislative Auditor General. The Committee adopted the amendment. Representative Cutler then asked whether the Auditor should be required to pay fees to the audited entity if the arbitrator rules in the entity's favor. The sponsor opposed this change, arguing that the Bill aims to discourage improper privilege claims by making it costly for entities to assert them without merit.

Representative McPherson asked whether both sides should share the cost of arbitration, as is common when an arbitrator decides on broader legal disputes. The sponsor explained that this provision deals with a narrow issue—whether a document is privileged or not—so cost-sharing would not be necessary. Representative McPherson also asked whether an entity that voluntarily discloses privileged documents to the Auditor would waive privilege in other proceedings or under GRAMA. The sponsor clarified that it would not, citing SJR 4, which ensures that attorney-client privileged records provided to the Auditor would not be classified as public records and would remain inaccessible under GRAMA or in court proceedings. He emphasized that this process does not waive privilege for other legal matter.

Two citizens spoke in support of the Bill. The Utah League of Cities and Towns acknowledged the issues Senator Brammer seeks to address but expressed three concerns. The first concern, regarding the arbitrator favoring the Office of the Legislative Auditor General in any decision, was addressed by the adopted Amendment. The second concern relates to the selection process for the arbitrator. The League suggested that if true neutrality is the goal, both parties should have the ability to select an arbitrator from a pool of qualified candidates. The third concern is the financial burden of arbitration. The League argued that if a party prevails on most issues, such as five out of six points, it should not be responsible for covering the full cost of arbitration. The Utah Bar Association expressed appreciation to the sponsor for amending the Bill to make it more balanced and to better protect attorney-client privilege within the process. Their only request is to further amend the Bill to ensure that the arbitrator is a neutral third party.

The sponsor would consider amending the Bill to make the arbitrator a neutral party to be unwelcome because this can be used to slow down the arbitration process. He pointed to lines 150-151 that require the arbitrator to be neutral. The sponsor expressed concerns with amending the Bill to further define the arbitrator as a neutral third-party selected by both parties because it could be used to delay the arbitration process. He pointed to lines 150-151, which already require the arbitrator to be neutral.

Yeas: 10

Nays: 3

N/V: 0

**Outcome: 1<sup>st</sup> Substitute SB 154 passed out of the Committee with a favorable recommendation.**

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