

1 **HIGHER EDUCATION SAVINGS INCENTIVE**

2 **PROGRAM AMENDMENTS**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Scott L Wyatt**

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Utah System of Higher Education Code and the Revenue and
10 Taxation Code regarding the Utah Educational Savings Plan Trust, an investment plan
11 used to pay for higher education costs.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ allows moneys in the Utah Educational Savings Plan Trust to be invested in mutual
16 funds;
- 17 ▶ allows the board of directors of the Utah Educational Savings Plan Trust to hire:
 - 18 • investment advisors with certain qualifications;
 - 19 • an administrator to perform recordkeeping functions; and
 - 20 • a custodian for the safekeeping of trust assets;
- 21 ▶ reestablishes the maximum amount of investments that may be subtracted from an
22 individual's federal taxable income for each beneficiary;
- 23 ▶ clarifies that beneficiaries shall be designated before age 19 to qualify to deduct
24 investments from federal taxable income;
- 25 ▶ requires that benefits be paid by a certain time;
- 26 ▶ requires each account agreement to clearly state that there are no guarantees
27 regarding moneys in the trust;



- 28 ▶ requires each account agreement to provide that:
- 29 • neither a contributor nor a beneficiary may direct the investment of any
- 30 contributions or earnings on contributions;
- 31 • money in the trust may not be used as security on a loan;
- 32 • an account owner may not borrow from the trust; and
- 33 • the program administrator may amend the agreement to maintain the trust as a
- 34 qualified tuition program under federal law;
- 35 ▶ allows transfers from the program fund to the administrative fund to pay for
- 36 operating costs as included in the budget approved by the board of directors of the
- 37 Utah Educational Savings Plan Trust;
- 38 ▶ discontinues the allocation of a pro rata share of interest income from the
- 39 endowment fund to all account owners;
- 40 ▶ allows interest income on the endowment fund to be used to enhance the savings of
- 41 low income account owners, in accordance with rules of the board of directors of
- 42 the Utah Educational Savings Plan Trust;
- 43 ▶ allows the original principal in the endowment fund to be transferred to the
- 44 administrative fund upon approval by the board of directors of the Utah Educational
- 45 Savings Plan Trust;
- 46 ▶ provides for the disbursement of account moneys and the levy of an administrative
- 47 refund fee when an account is cancelled;
- 48 ▶ conforms the Revenue and Taxation Code with federal tax law regarding tuition
- 49 programs;
- 50 ▶ eliminates the Utah Supplemental Educational Savings Plan Trust; and
- 51 ▶ makes technical changes.

52 **Monies Appropriated in this Bill:**

53 None

54 **Other Special Clauses:**

55 This bill provides an immediate effective date.

56 **Utah Code Sections Affected:**

57 AMENDS:

58 **53B-8a-101**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session

59 **53B-8a-102**, as last amended by Chapter 123, Laws of Utah 1998
60 **53B-8a-103**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session
61 **53B-8a-105**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session
62 **53B-8a-106**, as last amended by Chapter 144, Laws of Utah 2000
63 **53B-8a-107**, as last amended by Chapter 39, Laws of Utah 1997
64 **53B-8a-108**, as last amended by Chapter 211, Laws of Utah 2002
65 **53B-8a-109**, as last amended by Chapter 211, Laws of Utah 2002
66 **53B-8a-113**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session
67 **59-7-105**, as last amended by Chapter 211, Laws of Utah 2002
68 **59-10-114**, as last amended by Chapter 2, Laws of Utah 2004, Fourth Special Session
69 **59-10-201**, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session
70 **59-10-901**, as enacted by Chapter 390, Laws of Utah 1997

71 REPEALS:

72 **53B-8b-101**, as enacted by Chapter 390, Laws of Utah 1997
73 **53B-8b-102**, as enacted by Chapter 390, Laws of Utah 1997
74 **53B-8b-103**, as enacted by Chapter 390, Laws of Utah 1997
75 **53B-8b-104**, as enacted by Chapter 390, Laws of Utah 1997
76 **53B-8b-105**, as last amended by Chapter 240, Laws of Utah 1999
77 **53B-8b-106**, as enacted by Chapter 390, Laws of Utah 1997
78 **53B-8b-107**, as enacted by Chapter 390, Laws of Utah 1997
79 **53B-8b-108**, as enacted by Chapter 390, Laws of Utah 1997
80 **53B-8b-109**, as last amended by Chapter 210, Laws of Utah 2002
81 **53B-8b-110**, as enacted by Chapter 390, Laws of Utah 1997
82 **53B-8b-111**, as enacted by Chapter 390, Laws of Utah 1997
83 **53B-8b-112**, as enacted by Chapter 390, Laws of Utah 1997

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

86 Section 1. Section **53B-8a-101** is amended to read:

87 **53B-8a-101. Purpose.**

88 (1) (a) The Legislature finds that the general welfare and well-being of the state are
89 directly related to educational levels and skills of the citizens of the state.

90 (b) Therefore, a vital and valid public purpose is served by the creation and
91 implementation of programs which encourage and make possible the attainment of higher
92 education by the greatest number of citizens of the state.

93 (2) (a) The Legislature finds that the state has limited resources to provide additional
94 programs for higher education funding and that the continued operation and maintenance of the
95 state's public institutions of higher education and the general welfare of the citizens of the state
96 will be enhanced by establishing a program which allows citizens of the state to invest money
97 in a public trust for future application to the payment of higher education costs.

98 (b) The Legislature further finds that the creation of the means of encouragement for
99 citizens to invest in such a program represents the carrying out of a vital and valid public
100 purpose.

101 (3) (a) In order to make available to the citizens of the state an opportunity to fund
102 future higher education needs, it is necessary that a public trust be established in which moneys
103 may be invested for future educational use.

104 (b) It ~~is~~ may also be necessary to establish and create an endowment fund, which may
105 be funded with public funds, among other sources, the income from which ~~will~~ may be made
106 available to ~~[participants in the trust]~~ account owners to enhance their savings invested for
107 future higher education costs.

108 Section 2. Section **53B-8a-102** is amended to read:

109 **53B-8a-102. Definitions.**

110 As used in this chapter:

111 (1) "Account agreement" means an agreement between an account owner and the trust
112 entered into under this chapter.

113 (2) "Account owner" means an individual, firm, corporation, or its legal representative
114 or legal successor, who has entered into an account agreement under this chapter for the
115 advance payment of higher education costs on behalf of a beneficiary.

116 ~~(1)~~ (3) "Administrative fund" means the moneys used to administer the Utah
117 Educational Savings Plan Trust.

118 ~~(2)~~ (4) "Beneficiary" means the individual designated ~~[by a participation]~~ in an
119 account agreement to benefit from payments for higher education costs at an institution of
120 higher education.

121 ~~[(3)]~~ (5) "Benefits" means the payment of higher education costs on behalf of a
122 beneficiary by the trust during the beneficiary's attendance at an institution of higher education.

123 ~~[(4)]~~ (6) "Board" means the board of directors of the Utah Educational Savings Plan
124 Trust which is the state Board of Regents acting in its capacity as the Utah Higher Education
125 Assistance Authority under Title 53B, Chapter 12.

126 ~~[(5)]~~ (7) "Endowment fund" means the endowment fund established under Section
127 53B-8a-107 which is held as a separate fund within the trust.

128 ~~[(6)]~~ (8) "Higher education costs" means the certified costs of tuition, fees, room and
129 board, books, supplies, and equipment required for the enrollment or attendance of a
130 designated beneficiary at an institution of higher education.

131 ~~[(7)]~~ (9) "Institution of higher education" means a qualified proprietary school approved
132 by the board, a two-year or four-year public or regionally accredited private nonprofit college
133 or university or a Utah college of applied technology [~~center~~], with regard to students enrolled
134 in postsecondary training or education programs.

135 ~~[(8) "Participant" means an individual, firm, corporation, or its legal representative or
136 their legal successor, who has entered into a participation agreement under this chapter for the
137 advance payment of higher education costs on behalf of a beneficiary.]~~

138 ~~[(9) "Participation agreement" means an agreement between a participant and the trust
139 entered into under this chapter.]~~

140 (10) "Program administrator" means the administrator of the trust appointed by the
141 board to administer and manage the trust.

142 (11) "Program fund" means the program fund created under Section 53B-8a-107,
143 which is held as a separate fund within the trust.

144 (12) "Tuition and fees" means the quarterly or semester charges imposed to attend an
145 institution of higher education and required as a condition of enrollment.

146 (13) "Utah Educational Savings Plan Trust" or "trust" means the trust created under
147 Section 53B-8a-103.

148 (14) "Vested [~~participation agreement~~] account" means [~~a participation~~] an account
149 agreement which has been in full force and effect during eight continuous years of residency of
150 the beneficiary in the state while participating in the trust.

151 Section 3. Section **53B-8a-103** is amended to read:

152 **53B-8a-103. Creation of Utah Educational Savings Plan Trust.**

153 (1) There is created the Utah Educational Savings Plan Trust.

154 (2) The board is the trustee of the trust.

155 (3) The board, in the capacity of trustee, may:

156 (a) exercise any authority granted by law to the Board of Regents;

157 (b) make and enter into contracts necessary for the administration of the trust created
158 under this chapter;

159 (c) adopt a corporate seal and change and amend it from time to time;

160 (d) invest moneys within the program fund [~~and the endowment fund~~];161 (i) (A) in any investments [~~which~~] that are determined by the board to be appropriate[~~;~~]
162 and are approved by the state treasurer[~~, and~~]; or163 (B) in mutual funds registered under the Investment Company Act of 1940, consistent
164 with the best interests of a designated beneficiary's higher education funding needs; and165 (ii) are in compliance with rules of the State Money Management Council applicable to
166 gift funds;167 (e) invest moneys within the endowment fund in any investments that are:168 (i) determined by the board to be appropriate;169 (ii) approved by the state treasurer; and170 (iii) in compliance with rules of the State Money Management Council applicable to
171 gift funds;172 [~~(e)~~] (f) enter into agreements with any institution of higher education, [~~the state, or~~]
173 any federal or [~~other~~] state agency, or other entity as required to implement this chapter;174 [~~(f)~~] (g) accept any grants, gifts, legislative appropriations, and other moneys from the
175 state, any unit of federal, state, or local government, or any other person, firm, partnership, or
176 corporation for deposit to the administrative fund, endowment fund, or the program fund;177 [~~(g)~~] (h) enter into [~~participation~~] account agreements with [~~participants~~] account
178 owners;179 [~~(h)~~] (i) make payments to institutions of higher education pursuant to [~~participation~~]
180 account agreements on behalf of beneficiaries;181 [~~(i)~~] (j) make refunds to [~~participants~~] account owners upon the termination of
182 [~~participation~~] account agreements pursuant to the provisions[~~, limitations, and restrictions set~~

183 ~~forth in~~ of this chapter;

184 ~~[(j)]~~ (k) appoint a program administrator and determine the duties of the program
185 administrator and other staff as necessary and fix their compensation;

186 ~~[(k)]~~ (l) make provision for the payment of costs of administration and operation of the
187 trust; and

188 ~~[(h)]~~ (m) carry out the duties and obligations of the trust pursuant to this chapter.

189 Section 4. Section **53B-8a-105** is amended to read:

190 **53B-8a-105. Additional powers of board as to savings plan trust.**

191 The board has all powers necessary to carry out and effectuate the purposes, objectives,
192 and provisions of this chapter pertaining to the trust, including the power to:

193 (1) engage ~~[investment advisors to assist in the investment of trust assets;]~~;

194 (a) one or more investment advisors, registered under the Investment Advisors Act of
195 1940, with at least 5,000 advisory clients and at least \$1,000,000,000 under management, to
196 provide investment advice to the board with respect to the assets held in each account;

197 (b) an administrator to perform recordkeeping functions on behalf of the trust; and

198 (c) a custodian for the safekeeping of the assets of the trust;

199 (2) carry out studies and projections in order to advise ~~[participants]~~ account owners
200 regarding present and estimated future higher education costs and levels of financial
201 participation in the trust required in order to enable ~~[participants]~~ account owners to achieve
202 their educational funding objective;

203 (3) contract for goods and services and engage personnel as necessary, including
204 consultants, actuaries, managers, counsel, and auditors for the purpose of rendering
205 professional, managerial, and technical assistance and advice, all of which contract obligations
206 and services shall be payable from any moneys of the trust;

207 (4) participate in any other way in any federal, state, or local governmental program for
208 the benefit of the trust;

209 (5) promulgate, impose, and collect administrative fees and charges in connection with
210 transactions of the trust, and provide for reasonable service charges, including penalties for
211 cancellations and late payments ~~[in respect of participation agreements];~~

212 (6) procure insurance against any loss in connection with the property, assets, or
213 activities of the trust;

214 (7) administer the funds of the trust;

215 (8) solicit and accept for the benefit of the endowment fund gifts, grants, and other
216 moneys, including general fund moneys from the state and grants from any federal or other
217 governmental agency;

218 (9) procure insurance indemnifying any member of the board from personal loss or
219 accountability arising from liability resulting from a member's action or inaction as a member
220 of the board; and

221 (10) make rules and regulations for the administration of the trust.

222 Section 5. Section **53B-8a-106** is amended to read:

223 **53B-8a-106. Account agreements.**

224 The trust may enter into [~~participation~~] account agreements with [~~participants~~] account
225 owners on behalf of beneficiaries under the following terms and agreements:

226 (1) (a) [~~Each participation~~] An account agreement [~~shall~~] may require [~~a participant to~~]
227 an account owner to agree to invest a specific amount of money in the trust for a specific period
228 of time for the benefit of a specific beneficiary, not to exceed an amount determined by the
229 [~~board~~] program administrator.

230 (b) [~~Participation~~] Account agreements may be amended to provide for adjusted levels
231 of payments based upon changed circumstances or changes in educational plans.

232 (c) [~~A participant~~] An account owner may make additional optional payments as long
233 as the total payments for a specific beneficiary do not exceed the total estimated higher
234 education costs as determined by the [~~board~~] program administrator.

235 (d) The maximum amount of investments that may be subtracted from federal taxable
236 income of a resident or nonresident individual under Subsection 59-10-114(2)(j) shall be
237 [~~\$1,200~~] \$1,510 for each individual beneficiary for the [~~1996~~] 2005 calendar year and an
238 amount adjusted annually thereafter to reflect increases in the Consumer Price Index.

239 [~~(2) The participation agreement may include a minimum rate of return for the~~
240 ~~investment made by the participant.~~]

241 [~~(3)~~] (2) (a) (i) Beneficiaries designated in [~~participation~~] account agreements must be
242 designated [~~from date of birth through age 18~~] after birth and before age 19 for the participant
243 to subtract allowable investments from federal taxable income under Subsection
244 59-10-114(2)(j).

245 (ii) If the beneficiary is designated after birth and before age 19, the payment of
246 benefits provided under the account agreement must begin not later than the beneficiary's 27th
247 birthday.

248 (b) (i) ~~[Participants]~~ Account owners may designate beneficiaries ~~[after age 18]~~ age 19
249 or older, but investments for those beneficiaries are not eligible for subtraction from federal
250 taxable income.

251 ~~[(4) Payment]~~ (ii) If a beneficiary age 19 or older is designated, the payment of
252 benefits provided under [participation agreements] the account agreement must begin not later
253 than [the first full fall academic quarter or semester at an institution of higher education
254 following the 22nd birthday or high school graduation of the beneficiary, whichever is later,
255 unless the participant notifies the program administrator to the contrary.] ten years from the
256 account agreement date.

257 (3) Each account agreement shall state clearly that there are no guarantees regarding
258 moneys in the trust as to the return of principal and that losses could occur.

259 (4) Each account agreement shall provide that:

260 (a) no contributor to, or designated beneficiary under, an account agreement may direct
261 the investment of any contributions or earnings on contributions;

262 (b) no part of the money in any account may be used as security for a loan; and

263 (c) no account owner may borrow from the trust.

264 (5) The execution of ~~[a participation]~~ an account agreement by the trust may not
265 guarantee in any way that higher education costs will be equal to projections and estimates
266 provided by the trust or that the beneficiary named in any participation agreement will:

267 (a) be admitted to an institution of higher education;

268 (b) if admitted, be determined a resident for tuition purposes by the institution of
269 higher education, unless the ~~[participation]~~ account agreement is vested;

270 (c) be allowed to continue attendance at the institution of higher education following
271 admission; or

272 (d) graduate from the institution of higher education.

273 (6) Beneficiaries may be changed as permitted by the rules and regulations of the board
274 upon written request of the ~~[participant]~~ account owner prior to the date of admission of any
275 beneficiary under ~~[a participation]~~ an account agreement by an institution of higher education

276 so long as the substitute beneficiary is eligible for participation.

277 (7) [~~Participation~~] Account agreements may be freely amended throughout their terms
278 in order to enable [~~participants~~] account owners to increase or decrease the level of
279 participation, change the designation of beneficiaries, and carry out similar matters as
280 authorized by rule.

281 (8) Each [~~participation~~] account agreement shall provide that:

282 (a) the [~~participation~~] account agreement may be canceled upon the terms and
283 conditions, and upon payment of the fees and costs set forth and contained in the board's rules
284 and regulations[~~;~~]; and

285 (b) the program administrator may amend the agreement unilaterally and retroactively,
286 if necessary, to maintain the trust as a qualified tuition program under Section 529 Internal
287 Revenue Code.

288 Section 6. Section **53B-8a-107** is amended to read:

289 **53B-8a-107. Program, endowment, and administrative funds -- Investment and**
290 **payments from funds.**

291 (1) (a) The board shall segregate moneys received by the trust into three funds, the
292 program fund, the endowment fund, and the administrative fund.

293 (b) No more than two percentage points of the interest earned annually in the
294 endowment fund may be transferred to the administrative fund for the purpose of paying
295 operating costs associated with administering the trust and as required under Sections
296 53B-8a-103 through 53B-8a-105.

297 (c) [~~No more than .5 percentage points of the interest earned annually in~~] Transfers
298 may be made from the program fund [~~may be transferred~~] to the administrative fund to pay
299 operating costs:

300 (i) associated with administering the trust and as required under Sections 53B-8a-103
301 through 53B-8a-105[~~;~~]; and

302 (ii) as included in the budget approved by the board of directors of the Utah
303 Educational Savings Plan Trust.

304 (d) All moneys paid by [~~participants~~] account owners in connection with [~~participation~~]
305 account agreements shall be deposited as received into separate accounts within the program
306 fund which shall be promptly invested and accounted for separately.

307 (e) All moneys received by the trust from the proceeds of gifts and other endowments
308 for the purposes of the trust shall be deposited as received into the endowment fund, which
309 shall be promptly invested and accounted for separately.

310 [~~(f) The program fund and the endowment fund shall be separately administered.~~]

311 [~~(g)~~] (f) Any gifts, grants, or donations made by any governmental unit or any person,
312 firm, partnership, or corporation to the trust for deposit to the endowment fund shall be a grant,
313 gift, or donation to the state for the accomplishment of a valid public eleemosynary, charitable,
314 and educational purpose and shall not be included in the income of the donor for Utah tax
315 purposes.

316 (2) (a) [~~Each~~] Through March 31, 2005, each beneficiary under [~~a participation~~] an
317 account agreement shall receive an interest in a portion, as determined by policy, of the
318 investment income derived by the endowment fund in any year during which funds are invested
319 in the program fund on behalf of the beneficiary, to be payable [~~each year in which moneys are~~
320 ~~paid under the participation agreement to institutions of higher education for higher education~~
321 ~~costs, not to exceed the cost of attendance at the institution~~] as provided in Subsection (2)(c).

322 (b) The interest in the investment income derived by the endowment fund that accrues
323 to a beneficiary in any year shall be in the ratio that the principal amount paid by the
324 [~~participant~~] account owner under the [~~participation~~] account agreement and investment
325 income earned to date under the agreement bears to the principal amount of all moneys, funds,
326 and securities then held in the program fund during the year.

327 (c) [~~At~~] (i) Except as provided in Subsection (2)(c)(ii), at the time any payments or
328 disbursements for higher education costs are [~~due~~] made from the trust to any institution of
329 higher education under [~~a participation~~] an account agreement, the trust shall add to that
330 payment from endowment fund income a pro rata portion of the amount calculated pursuant to
331 Subsection (2)(b), which shall be transferred directly to the institution of higher education
332 simultaneously with the payment made from the program fund and shall be used for payment of
333 the higher education costs of the beneficiary, but not to exceed the amount which, in
334 combination with the current payment due from the program fund, equals the beneficiary's
335 higher education costs for the current period of enrollment.

336 (ii) Effective March 31, 2005, any interest income on the endowment fund accruing to
337 a beneficiary that has not been transferred to an institution of higher education pursuant to

338 Subsection (2)(c)(i) shall be transferred to the beneficiary's program fund account.

339 (3) Beginning on April 1, 2005:

340 (a) interest income on the endowment fund may be used to enhance the savings of low
341 income account owners investing in the trust, as provided by rules of the board; and

342 (b) the original principal in the endowment fund may be transferred to the
343 administrative fund upon approval by the board.

344 ~~[(d)]~~ (4) Endowment fund earnings not accruing to a beneficiary under a participation
345 agreement or not transferred to the administrative fund shall be reinvested in the endowment
346 fund.

347 ~~[(e)]~~ (5) Moneys accrued by ~~[participants]~~ account owners in the program fund of the
348 trust may be used for payments to any institution of higher education.

349 ~~[(f)]~~ (6) No rights to any moneys derived from the endowment fund shall exist if
350 moneys payable under the ~~[participation]~~ account agreement are paid to an education institution
351 which is not an institution of higher education as defined in Section 53B-8a-102.

352 Section 7. Section **53B-8a-108** is amended to read:

353 **53B-8a-108. Cancellation of agreements.**

354 (1) Any ~~[participant]~~ account owner may cancel ~~[a participation]~~ an account agreement
355 at will.

356 ~~[(2) If the participation agreement is canceled by a participant prior to the expiration of~~
357 ~~two years from the date of original execution of the participation agreement, the participant~~
358 ~~shall receive 100% of the principal amount of all contributions made by the participant, up to~~
359 ~~the current account balance, but any investment income which has been credited to the~~
360 ~~participant's account may be retained by the trust to cover administration expenses.]~~

361 ~~[(3) After a participation agreement has been in effect for two years, a participant shall~~
362 ~~be entitled to the return upon cancellation of the agreement of the principal amount of all~~
363 ~~contributions made by the participant, up to the current account balance, plus actual investment~~
364 ~~income on the contributions less a reasonable administrative refund fee to be levied by the~~
365 ~~trust, which shall be sufficient to reasonably compensate the trust for its administrative costs~~
366 ~~incident to the participation agreement.]~~

367 ~~[(4) (a) Upon the occurrence of any of the following circumstances, a reasonable]~~

368 (2) If an account agreement is cancelled by the account owner, the current account

369 balance shall be disbursed to the account owner less:

370 (a) an administrative refund fee, which may be charged by the trust, except as provided
 371 in Subsection (3); and

372 (b) any penalty or tax required to be withheld by the Internal Revenue Code.

373 (3) An administration refund fee may not be levied by the trust [in the event of
 374 termination of a participation] if the account agreement is cancelled due to:

375 [(i)] (a) the death of the beneficiary; or

376 [(ii)] (b) the permanent disability or mental incapacity of the beneficiary.

377 [(b) In the event of cancellation of a participation agreement for any of the causes listed
 378 in Subsection (4)(a), the participant shall be entitled to receive the principal amount of all
 379 payments made by the participant under the participation agreement, up to the current account
 380 balance, and the actual investment income earned on the payments.]

381 (4) The board shall make rules for the disposition of monies transferred to an account
 382 pursuant to Subsection 53A-8a-107(2)(c)(ii) and the earnings on those monies when an account
 383 agreement is cancelled.

384 Section 8. Section **53B-8a-109** is amended to read:

385 **53B-8a-109. Repayment and ownership of payments and investment income --**
 386 **Transfer of ownership rights.**

387 (1) (a) The [~~participant~~] account owner retains ownership of all payments made under
 388 [~~any participation~~] the account agreement [~~up to the date of utilization for payment of~~] until
 389 utilized to pay higher education costs for the beneficiary.

390 (b) All income derived from the investment of the payments made by the [~~participant~~]
 391 account owner shall be considered to be held in trust for the benefit of the beneficiary.

392 [~~(2) (a) In the event the participation agreement is terminated prior to payment of~~
 393 ~~higher education costs for the beneficiary, the participant is entitled to a full refund of all~~
 394 ~~payments made under the participation agreement, up to the current account balance, and all~~
 395 ~~investment income credited on all the payments, less:]~~

396 [~~(i) a reasonable administrative fee which may be levied by the trust; and]~~

397 [~~(ii) any penalty or tax required to be withheld by the Internal Revenue Code.]~~

398 [~~(b) No right to receive investment income shall exist in cases of voluntary participant~~
 399 ~~termination except as provided in Section 53B-8a-108.]~~

400 ~~[(3) If the beneficiary graduates from an institution of higher education, and a balance~~
401 ~~remains in the participant's account, then the program administrator shall pay the balance to the~~
402 ~~participant.]~~

403 ~~[(4)]~~ (2) The institution of higher education shall obtain ownership of the payments
404 made for the higher education costs paid to the institution at the time each payment is made to
405 the institution.

406 ~~[(5)]~~ (3) Any amounts ~~[which]~~ that may be paid pursuant to the Utah Educational
407 Savings Plan Trust ~~[which]~~ that are not listed in this section are owned by the trust.

408 ~~[(6)]~~ (4) (a) ~~[A participant]~~ An account owner may transfer ownership rights to another
409 eligible ~~[participant, including a gift of the ownership rights to a minor beneficiary]~~ person.

410 (b) The transfer shall be affected and the property distributed in accordance with
411 administrative regulations promulgated by the board or the terms of the ~~[participation]~~ account
412 agreement.

413 Section 9. Section **53B-8a-113** is amended to read:

414 **53B-8a-113. Property rights to assets in trust.**

415 (1) The assets of the trust, including the program fund and the endowment fund, shall
416 at all times be preserved, invested, and expended solely and only for the purposes of the trust
417 and shall be held in trust for the ~~[participants]~~ account owners and beneficiaries.

418 (2) No property rights in the trust shall exist in favor of the state.

419 (3) The assets may not be transferred or used by the state for any purposes other than
420 the purposes of the trust.

421 Section 10. Section **59-7-105** is amended to read:

422 **59-7-105. Additions to unadjusted income.**

423 In computing adjusted income the following amounts shall be added to unadjusted
424 income:

425 (1) interest from bonds, notes, and other evidences of indebtedness issued by any state
426 of the United States, including any agency and instrumentality of a state of the United States;

427 (2) the amount of any deduction taken on a corporation's federal return for taxes paid
428 by a corporation:

429 (a) to Utah for taxes imposed by this chapter; and

430 (b) to another state of the United States, a foreign country, a United States possession,

431 or the Commonwealth of Puerto Rico for taxes imposed for the privilege of doing business, or
432 exercising its corporate franchise, including income, franchise, corporate stock and business
433 and occupation taxes;

434 (3) the safe harbor lease adjustment required under Subsections 59-7-111(1)(a) and
435 (2)(a);

436 (4) capital losses that have been deducted on a Utah corporate return in previous years;

437 (5) any deduction on the federal return that has been previously deducted on the Utah
438 return;

439 (6) the amount of contributions claimed as a tax credit pursuant to Section 59-7-602;

440 (7) the amount of the deduction taken pursuant to Section 59-7-603 for sophisticated
441 technological equipment;

442 (8) charitable contributions, to the extent deducted on the federal return when
443 determining federal taxable income;

444 (9) the amount of gain or loss determined under Section 59-7-114 relating to a target
445 corporation under Section 338, Internal Revenue Code, unless such gain or loss has already
446 been included in the unadjusted income of the target corporation;

447 (10) the amount of gain or loss determined under Section 59-7-115 relating to
448 corporations treated for federal purposes as having disposed of its assets under Section 336(e),
449 Internal Revenue Code, unless such gain or loss has already been included in the unadjusted
450 income of the target corporation;

451 (11) adjustments to gains, losses, depreciation expense, amortization expense, and
452 similar items due to a difference between basis for federal purposes and basis as computed
453 under Section 59-7-107; and

454 (12) the amount [~~refunded~~] disbursed to [~~a participant or beneficiary~~] an account owner
455 under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, to the extent
456 deducted on a Utah return in previous years and not used for qualified higher education costs of
457 the beneficiary, in the year in which the amount is [~~refunded~~] disbursed.

458 Section 11. Section **59-10-114** is amended to read:

459 **59-10-114. Additions to and subtractions from federal taxable income of an**
460 **individual.**

461 (1) There shall be added to federal taxable income of a resident or nonresident

462 individual:

463 (a) the amount of any income tax imposed by this or any predecessor Utah individual
464 income tax law and the amount of any income tax imposed by the laws of another state, the
465 District of Columbia, or a possession of the United States, to the extent deducted from federal
466 adjusted gross income, as defined by Section 62, Internal Revenue Code, in determining federal
467 taxable income;

468 (b) a lump sum distribution that the taxpayer does not include in adjusted gross income
469 on the taxpayer's federal individual income tax return for the taxable year;

470 (c) for taxable years beginning on or after January 1, 2002, the amount of a child's
471 income calculated under Subsection (5) that:

472 (i) a parent elects to report on the parent's federal individual income tax return for the
473 taxable year; and

474 (ii) the parent does not include in adjusted gross income on the parent's federal
475 individual income tax return for the taxable year;

476 (d) 25% of the personal exemptions, as defined and calculated in the Internal Revenue
477 Code;

478 (e) a withdrawal from a medical care savings account and any penalty imposed in the
479 taxable year if:

480 (i) the taxpayer did not deduct or include the amounts on the taxpayer's federal
481 individual income tax return pursuant to Section 220, Internal Revenue Code; and

482 (ii) the withdrawal is subject to Subsections 31A-32a-105(1) and (2);

483 (f) the amount [~~refunded~~] disbursed to [~~a participant~~] an account owner under Title
484 53B, Chapter 8a, Higher Education Savings Incentive Program, in the year in which the amount
485 is [~~refunded~~] disbursed;

486 (g) except as provided in Subsection (6), for taxable years beginning on or after
487 January 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after
488 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by
489 one or more of the following entities:

490 (i) a state other than this state;

491 (ii) the District of Columbia;

492 (iii) a political subdivision of a state other than this state; or

493 (iv) an agency or instrumentality of an entity described in Subsections (1)(g)(i) through
494 (iii);

495 (h) any distribution received by a resident beneficiary of a resident trust of income that
496 was taxed at the trust level for federal tax purposes, but was subtracted from state taxable
497 income of the trust pursuant to Subsection 59-10-202(2)(c); and

498 (i) any distribution received by a resident beneficiary of a nonresident trust of income
499 that was taxed at the trust level for federal tax purposes, but was not taxed at the trust level by
500 any state.

501 (2) There shall be subtracted from federal taxable income of a resident or nonresident
502 individual:

503 (a) the interest or dividends on obligations or securities of the United States and its
504 possessions or of any authority, commission, or instrumentality of the United States, to the
505 extent includable in gross income for federal income tax purposes but exempt from state
506 income taxes under the laws of the United States, but the amount subtracted under this
507 Subsection (2)(a) shall be reduced by any interest on indebtedness incurred or continued to
508 purchase or carry the obligations or securities described in this Subsection (2)(a), and by any
509 expenses incurred in the production of interest or dividend income described in this Subsection
510 (2)(a) to the extent that such expenses, including amortizable bond premiums, are deductible in
511 determining federal taxable income;

512 (b) (i) except as provided in Subsection (2)(b)(ii), 1/2 of the net amount of any income
513 tax paid or payable to the United States after all allowable credits, as reported on the United
514 States individual income tax return of the taxpayer for the same taxable year; and

515 (ii) notwithstanding Subsection (2)(b)(i), for taxable years beginning on or after
516 January 1, 2001, the amount of a credit or an advance refund amount reported on a resident or
517 nonresident individual's United States individual income tax return allowed as a result of the
518 acceleration of the income tax rate bracket benefit for 2001 in accordance with Section 101,
519 Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, may not be
520 used in calculating the amount described in Subsection (2)(b)(i);

521 (c) the amount of adoption expenses for one of the following taxable years as elected
522 by the resident or nonresident individual:

523 (i) regardless of whether a court issues an order granting the adoption, the taxable year

524 in which the adoption expenses are:

525 (A) paid; or

526 (B) incurred;

527 (ii) the taxable year in which a court issues an order granting the adoption; or

528 (iii) any year in which the resident or nonresident individual may claim the federal

529 adoption expenses credit under Section 23, Internal Revenue Code;

530 (d) amounts received by taxpayers under age 65 as retirement income which, for

531 purposes of this section, means pensions and annuities, paid from an annuity contract

532 purchased by an employer under a plan which meets the requirements of Section 404(a)(2),

533 Internal Revenue Code, or purchased by an employee under a plan which meets the

534 requirements of Section 408, Internal Revenue Code, or paid by the United States, a state, or

535 political subdivision thereof, or the District of Columbia, to the employee involved or the

536 surviving spouse;

537 (e) for each taxpayer age 65 or over before the close of the taxable year, a \$7,500

538 personal retirement exemption;

539 (f) 75% of the amount of the personal exemption, as defined and calculated in the

540 Internal Revenue Code, for each dependent child with a disability and adult with a disability

541 who is claimed as a dependent on a taxpayer's return;

542 (g) any amount included in federal taxable income that was received pursuant to any

543 federal law enacted in 1988 to provide reparation payments, as damages for human suffering,

544 to United States citizens and resident aliens of Japanese ancestry who were interned during

545 World War II;

546 (h) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the

547 taxable year for health care insurance, as defined in Title 31A, Chapter 1, General Provisions:

548 (i) for:

549 (A) the taxpayer;

550 (B) the taxpayer's spouse; and

551 (C) the taxpayer's dependents; and

552 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or

553 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

554 (i) (i) except as otherwise provided in this Subsection (2)(i), the amount of a

555 contribution made during the taxable year on behalf of the taxpayer to a medical care savings
556 account and interest earned on a contribution to a medical care savings account established
557 pursuant to Title 31A, Chapter 32a, Medical Care Savings Account Act, to the extent the
558 contribution is accepted by the account administrator as provided in the Medical Care Savings
559 Account Act, and if the taxpayer did not deduct or include amounts on the taxpayer's federal
560 individual income tax return pursuant to Section 220, Internal Revenue Code; and

561 (ii) a contribution deductible under this Subsection (2)(i) may not exceed either of the
562 following:

563 (A) the maximum contribution allowed under the Medical Care Savings Account Act
564 for the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is
565 covered by health care insurance as defined in Section 31A-1-301 or self-funded plan that
566 covers the other spouse, and each spouse has a medical care savings account; or

567 (B) the maximum contribution allowed under the Medical Care Savings Account Act
568 for the tax year for taxpayers:

569 (I) who do not file a joint return; or

570 (II) who file a joint return, but do not qualify under Subsection (2)(i)(ii)(A);

571 (j) the amount included in federal taxable income that was derived from money paid by
572 ~~[the taxpayer]~~ an account owner to the program fund under Title 53B, Chapter 8a, Higher
573 Education Savings Incentive Program, not to exceed amounts determined under Subsection
574 53B-8a-106(1)(d), and investment income earned on ~~[participation]~~ account agreements ~~[under~~
575 ~~Subsection 53B-8a-106(1)]~~ entered into under Section 53B-8a-106 that is included in federal
576 taxable income, but only when the funds are used for qualified higher education costs of the
577 beneficiary;

578 (k) for taxable years beginning on or after January 1, 2000, any amounts paid for
579 premiums for long-term care insurance as defined in Section 31A-1-301 to the extent the
580 amounts paid for long-term care insurance were not deducted under Section 213, Internal
581 Revenue Code, in determining federal taxable income;

582 (l) for taxable years beginning on or after January 1, 2000, if the conditions of
583 Subsection (4)(a) are met, the amount of income derived by a Ute tribal member:

584 (i) during a time period that the Ute tribal member resides on homesteaded land
585 diminished from the Uintah and Ouray Reservation; and

586 (ii) from a source within the Uintah and Ouray Reservation;

587 (m) (i) for taxable years beginning on or after January 1, 2003, the total amount of a

588 resident or nonresident individual's short-term capital gain or long-term capital gain on a

589 capital gain transaction:

590 (A) that occurs on or after January 1, 2003;

591 (B) if 70% or more of the gross proceeds of the capital gain transaction are expended:

592 (I) to purchase qualifying stock in a Utah small business corporation; and

593 (II) within a 12-month period after the day on which the capital gain transaction occurs;

594 and

595 (C) if, prior to the purchase of the qualifying stock described in Subsection

596 (2)(m)(i)(B)(I), the resident or nonresident individual did not have an ownership interest in the

597 Utah small business corporation that issued the qualifying stock; and

598 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

599 commission may make rules:

600 (A) defining the term "gross proceeds"; and

601 (B) for purposes of Subsection (2)(m)(i)(C), prescribing the circumstances under which

602 a resident or nonresident individual has an ownership interest in a Utah small business

603 corporation; and

604 (n) (i) except as provided in Subsection (2)(n)(ii), for the taxable year beginning on or

605 after January 1, 2004, but beginning on or before December 31, 2004, income a resident or

606 nonresident individual receives:

607 (A) for qualifying military service; and

608 (B) to the extent that income is included in adjusted gross income on that resident or

609 nonresident individual's federal individual income tax return for that taxable year;

610 (ii) notwithstanding Subsection (2)(n)(i), a subtraction from federal taxable income is

611 not allowed under Subsection (2)(n)(i) for income included in adjusted gross income on a

612 resident or nonresident individual's federal individual income tax return for that taxable year if

613 that income is received from a source that constitutes a:

614 (A) pension; or

615 (B) survivor benefit; and

616 (iii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,

617 for purposes of Subsections (1)(n)(i) and (ii), the commission may by rule define what
618 constitutes income:

619 (A) a resident or nonresident individual receives for qualifying military service; or

620 (B) received from a source that constitutes a:

621 (I) pension; or

622 (II) survivor benefit.

623 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted
624 for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or
625 \$4,800, except that:

626 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income
627 earned over \$32,000, the amount of the retirement income exemption that may be subtracted
628 shall be reduced by 50 cents;

629 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income
630 earned over \$16,000, the amount of the retirement income exemption that may be subtracted
631 shall be reduced by 50 cents; and

632 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
633 \$25,000, the amount of the retirement income exemption that may be subtracted shall be
634 reduced by 50 cents.

635 (b) For purposes of Subsection (2)(e), the amount of the personal retirement exemption
636 shall be further reduced according to the following schedule:

637 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income
638 earned over \$32,000, the amount of the personal retirement exemption shall be reduced by 50
639 cents;

640 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income
641 earned over \$16,000, the amount of the personal retirement exemption shall be reduced by 50
642 cents; and

643 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
644 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

645 (c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be
646 calculated by adding to federal adjusted gross income any interest income not otherwise
647 included in federal adjusted gross income.

648 (d) For purposes of determining ownership of items of retirement income common law
649 doctrine will be applied in all cases even though some items may have originated from service
650 or investments in a community property state. Amounts received by the spouse of a living
651 retiree because of the retiree's having been employed in a community property state are not
652 deductible as retirement income of such spouse.

653 (e) For purposes of Subsection (2)(h), a subtraction for an amount paid for health care
654 insurance as defined in Title 31A, Chapter 1, General Provisions, is not allowed:

655 (i) for an amount that is reimbursed or funded in whole or in part by the federal
656 government, the state, or an agency or instrumentality of the federal government or the state;
657 and

658 (ii) for a taxpayer who is eligible to participate in a health plan maintained and funded
659 in whole or in part by the taxpayer's employer or the taxpayer's spouse's employer.

660 (4) (a) A subtraction for an amount described in Subsection (2)(l) is allowed only if:

661 (i) the taxpayer is a Ute tribal member; and

662 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
663 requirements of this Subsection (4).

664 (b) The agreement described in Subsection (4)(a):

665 (i) may not:

666 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

667 (B) provide a subtraction under this section greater than or different from the
668 subtraction described in Subsection (2)(l); or

669 (C) affect the power of the state to establish rates of taxation; and

670 (ii) shall:

671 (A) provide for the implementation of the subtraction described in Subsection (2)(l);

672 (B) be in writing;

673 (C) be signed by:

674 (I) the governor; and

675 (II) the chair of the Business Committee of the Ute tribe;

676 (D) be conditioned on obtaining any approval required by federal law; and

677 (E) state the effective date of the agreement.

678 (c) (i) The governor shall report to the commission by no later than February 1 of each

679 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
680 in effect.

681 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
682 subtraction permitted under Subsection (2)(l) is not allowed for taxable years beginning on or
683 after the January 1 following the termination of the agreement.

684 (d) For purposes of Subsection (2)(l) and in accordance with Title 63, Chapter 46a,
685 Utah Administrative Rulemaking Act, the commission may make rules:

686 (i) for determining whether income is derived from a source within the Uintah and
687 Ouray Reservation; and

688 (ii) that are substantially similar to how federal adjusted gross income derived from
689 Utah sources is determined under Section 59-10-117.

690 (5) (a) For purposes of this Subsection (5), "Form 8814" means:

691 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's
692 Interest and Dividends; or

693 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by
694 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to
695 2000 Form 8814 if for purposes of federal individual income taxes the information contained
696 on 2000 Form 8814 is reported on a form other than Form 8814; and

697 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter
698 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form
699 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income
700 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
701 8814.

702 (b) The amount of a child's income added to adjusted gross income under Subsection
703 (1)(c) is equal to the difference between:

704 (i) the lesser of:

705 (A) the base amount specified on Form 8814; and

706 (B) the sum of the following reported on Form 8814:

707 (I) the child's taxable interest;

708 (II) the child's ordinary dividends; and

709 (III) the child's capital gain distributions; and

710 (ii) the amount not taxed that is specified on Form 8814.

711 (6) Notwithstanding Subsection (1)(g), interest from bonds, notes, and other evidences
712 of indebtedness issued by an entity described in Subsections (1)(g)(i) through (iv) may not be
713 added to federal taxable income of a resident or nonresident individual if, as annually
714 determined by the commission:

715 (a) for an entity described in Subsection (1)(g)(i) or (ii), the entity and all of the
716 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
717 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

718 (b) for an entity described in Subsection (1)(g)(iii) or (iv), the following do not impose
719 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of
720 this state:

721 (i) the entity; or

722 (ii) (A) the state in which the entity is located; or

723 (B) the District of Columbia, if the entity is located within the District of Columbia.

724 Section 12. Section **59-10-201** is amended to read:

725 **59-10-201. Taxation of resident trusts and estates.**

726 (1) A tax determined in accordance with the rates prescribed by Section 59-10-104 for
727 individuals filing separately is imposed for each taxable year on the state taxable income of
728 each resident estate or trust, except for trusts taxed as corporations.

729 (2) A resident estate or trust shall be allowed the credit provided in Section 59-10-106,
730 relating to an income tax imposed by another state, except that the limitation shall be computed
731 by reference to the taxable income of the estate or trust.

732 (3) The property of the [~~trusts~~] trust established in Title 53B, Chapter 8a, Higher
733 Education Savings Incentive Program, [~~and Chapter 8b, Higher Education Supplemental~~
734 ~~Savings Incentive Program,~~] and [~~their~~] its income from operations and investments are exempt
735 from all taxation by the state under this chapter.

736 Section 13. Section **59-10-901** is amended to read:

737 **59-10-901. Tax considerations for Utah Supplemental Educational Savings Plan**
738 **Trust.**

739 [~~(1)(a)~~] A contribution to the Utah Supplemental Educational Savings Plan Trust
740 created under Section 53B-8b-103 on behalf of a designated beneficiary is not a taxable gift.

741 ~~[(b) Income tax is due on investment gains from the trust at the time the gains are~~
742 ~~actually distributed.]~~

743 ~~[(c) At the time of a distribution, any amounts used to pay for qualified higher~~
744 ~~education expenses shall be taxed to the designated beneficiary on whose behalf the amounts~~
745 ~~are distributed.]~~

746 ~~[(2) The tax commission, in consultation with the board, may adopt rules necessary to~~
747 ~~monitor and implement Subsection (1) as related to the property of the trust and its investment~~
748 ~~gains and losses.]~~

749 **Section 14. Repealer.**

750 This bill repeals:

751 **Section 53B-8b-101, Purpose.**

752 **Section 53B-8b-102, Definitions.**

753 **Section 53B-8b-103, Creation of Utah Supplemental Educational Savings Plan**
754 **Trust.**

755 **Section 53B-8b-104, Additional powers of board as to the trust.**

756 **Section 53B-8b-105, Participation agreements -- Content.**

757 **Section 53B-8b-106, Program and administrative funds -- Transfer between funds.**

758 **Section 53B-8b-107, Ownership of contributions and earnings.**

759 **Section 53B-8b-108, Effect of payments on determination of need and eligibility**
760 **for student aid.**

761 **Section 53B-8b-109, Annual audited financial report.**

762 **Section 53B-8b-110, Tax considerations.**

763 **Section 53B-8b-111, Property rights to assets in trust.**

764 **Section 53B-8b-112, Liberal construction.**

765 **Section 15. Effective date.**

766 If approved by two-thirds of all the members elected to each house, this bill takes effect
767 upon approval by the governor, or the day following the constitutional time limit of Utah
768 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
769 the date of veto override.

Legislative Review Note

as of 1-24-05 10:47 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0102

Higher Education Savings Incentive Program Amendments

28-Jan-05

3:34 PM

State Impact

No fiscal impact on the modifications to the Utah Savings Plan Trust. The additional responsibilities of the board can be handled within existing operation budgets.

Individual and Business Impact

Investment advisers are limited to those with at least 5,000 advisory clients and at least \$1,000,000 under management.

Office of the Legislative Fiscal Analyst