

Senator Wayne L. Niederhauser proposes the following substitute bill:

UTAH EDUCATIONAL SAVINGS PLAN

AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: Gregory H. Hughes

LONG TITLE

General Description:

This bill modifies provisions related to the Utah Educational Savings Plan.

Highlighted Provisions:

This bill:

▶ amends the governance and oversight authority of the State Board of Regents for the Utah Educational Savings Plan;

▶ modifies Utah Educational Savings Plan provisions, including:

- clarifying the plan's name, powers, and duties;
- beginning with the 2011 taxable year, eliminating a requirement to reduce the value of the Utah Educational Savings Plan tax credit or deduction when the Consumer Price Index decreases from one year to the next; and

- exempting certain withdrawals from the add back provisions of a Utah state income tax credit or deduction previously claimed;

▶ defines terms; and

▶ makes technical changes.

Monies Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 This bill provides an immediate effective date.

28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 **53B-8-110**, as last amended by Laws of Utah 2009, Chapter 329
- 31 **53B-8a-101**, as last amended by Laws of Utah 2008, Chapter 196
- 32 **53B-8a-102**, as last amended by Laws of Utah 2008, Chapter 196
- 33 **53B-8a-103**, as last amended by Laws of Utah 2007, Chapter 100
- 34 **53B-8a-104**, as last amended by Laws of Utah 2007, Chapter 100
- 35 **53B-8a-105**, as last amended by Laws of Utah 2009, Chapter 356
- 36 **53B-8a-106**, as last amended by Laws of Utah 2008, Chapters 196 and 389
- 37 **53B-8a-107**, as last amended by Laws of Utah 2008, Chapter 196
- 38 **53B-8a-108**, as last amended by Laws of Utah 2008, Chapter 196
- 39 **53B-8a-109**, as last amended by Laws of Utah 2008, Chapter 196
- 40 **53B-8a-110**, as enacted by Laws of Utah 1996, Second Special Session, Chapter 4
- 41 **53B-8a-111**, as last amended by Laws of Utah 2008, Chapter 196
- 42 **53B-8a-112**, as last amended by Laws of Utah 2007, Chapter 100
- 43 **53B-8a-113**, as last amended by Laws of Utah 2007, Chapter 100
- 44 **59-1-403**, as last amended by Laws of Utah 2009, Chapters 31, 45, 64, 203, and 251
- 45 **59-7-105**, as last amended by Laws of Utah 2008, Chapter 389
- 46 **59-7-106**, as last amended by Laws of Utah 2009, Chapter 312
- 47 **59-10-114**, as last amended by Laws of Utah 2008, Chapters 382 and 389
- 48 **59-10-201**, as last amended by Laws of Utah 2008, Chapter 389
- 49 **59-10-202**, as last amended by Laws of Utah 2008, Chapters 382 and 389
- 50 **59-10-1017**, as renumbered and amended by Laws of Utah 2008, Chapter 389
- 51 **59-10-1313**, as enacted by Laws of Utah 2009, Chapter 251
- 52 **63G-2-305**, as last amended by Laws of Utah 2009, Chapters 64 and 121



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

55 Section 1. Section **53B-8-110** is amended to read:

56 **53B-8-110. Regents' Scholarship Program -- Supplemental award to encourage**

57 college savings.

58 (1) A student who qualifies for the Base Regents' Scholarship in accordance with the
59 provisions of Section 53B-8-109 may be awarded up to an additional \$400 as provided in this
60 section.

61 (2) A student who qualifies for the Base Regents' Scholarship shall be awarded \$100
62 for a year that:

63 (a) the student was 14, 15, 16, or 17 years of age; and

64 (b) at least \$100 in contributions, excluding transfers, investment earnings, and
65 interest, was deposited in a Utah Educational Savings Plan [~~Trust~~] account that designated the
66 student as the beneficiary.

67 Section 2. Section **53B-8a-101** is amended to read:

68 **CHAPTER 8a. UTAH EDUCATIONAL SAVINGS PLAN**

69 **53B-8a-101. Purpose.**

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

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

75 (2) (a) The Legislature finds that the state has limited resources to provide additional
76 programs for higher education funding and that the continued operation and maintenance of the
77 state's public institutions of higher education and the general welfare of the citizens of the state
78 will be enhanced by establishing a [~~program~~] plan which allows citizens of the state to invest
79 money in a public trust for future application to the payment of higher education costs.

80 (b) The Legislature further finds that [~~a program~~] the plan described in Subsection
81 (2)(a) serves a vital and valid public purpose.

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

85 (b) It may also be necessary to establish and create an endowment fund, which may be
86 funded with public funds, among other sources, the income from which may be made available
87 to account owners to enhance or encourage their savings invested for future higher education

88 costs or for use in scholarship or other college savings incentive programs.

89 Section 3. Section **53B-8a-102** is amended to read:

90 **53B-8a-102. Definitions.**

91 As used in this chapter:

92 (1) "Account agreement" means an agreement between an account owner and the Utah
93 Educational Savings Plan [~~Trust~~] entered into under this chapter.

94 (2) "Account owner" means a person, estate, or trust, if that person, estate, or trust has
95 entered into an account agreement under this chapter to save for the higher education costs on
96 behalf of a beneficiary.

97 (3) "Administrative fund" means the moneys used to administer the Utah Educational
98 Savings Plan [~~Trust~~].

99 (4) "Beneficiary" means the individual designated in an account agreement to benefit
100 from the amount saved for higher education costs.

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

104 (6) "Endowment fund" means the endowment fund established under Section
105 53B-8a-107 which is held as a separate fund within the Utah Educational Savings Plan [~~Trust~~].

106 (7) "Executive director" means the administrator appointed to administer and manage
107 the Utah Educational Savings Plan.

108 [~~(7)~~] (8) "Higher education costs" means qualified higher education expenses as
109 defined in Section 529(e)(3), Internal Revenue Code.

110 (9) "Plan" means the Utah Educational Savings Plan created in Section 53B-8a-103.

111 [~~(8)~~] "~~Program administrator~~" means ~~the administrator of the Utah Educational Savings~~
112 ~~Plan Trust appointed by the board to administer and manage the Utah Educational Savings Plan~~
113 ~~Trust.~~]

114 [~~(9)~~] (10) "Program fund" means the program fund created under Section 53B-8a-107,
115 which is held as a separate fund within the Utah Educational Savings Plan [~~Trust~~].

116 [~~(10)~~] (11) "Qualified investment" means an amount invested in accordance with an
117 account agreement established under this chapter.

118 [~~(11)~~] (12) "Tuition and fees" means the quarterly or semester charges imposed to

119 attend an institution of higher education and required as a condition of enrollment.

120 ~~[(12) "Utah Educational Savings Plan Trust" means the Utah Educational Savings Plan~~
121 ~~Trust created under Section 53B-8a-103.]~~

122 Section 4. Section **53B-8a-103** is amended to read:

123 **53B-8a-103. Creation of Utah Educational Savings Plan -- Powers and duties of**
124 **plan.**

125 (1) There is created the Utah Educational Savings Plan ~~[Trust]~~, which may also be
126 known and function as the Utah Educational Savings Plan Trust.

127 ~~[(2) The board is the trustee of the Utah Educational Savings Plan Trust.]~~

128 (2) The plan:

129 (a) is a non-profit, self-supporting agency that administers a public trust;

130 (b) shall administer the various programs, funds, trusts, plans, functions, duties, and
131 obligations assigned to the plan:

132 (i) consistent with sound fiduciary principles; and

133 (ii) subject to review of the board; and

134 (c) shall be known as and managed as a qualified tuition program in compliance with
135 Section 529, Internal Revenue Code, that is sponsored by the state.

136 (3) ~~[The board, in the capacity of trustee;]~~ The plan may:

137 ~~[(a) exercise any authority granted by law to the Board of Regents;]~~

138 ~~[(b)]~~ (a) make and enter into contracts necessary for the administration of the [Utah
139 Educational Savings Plan Trust created under this chapter;] plan payable from plan moneys,
140 including:

141 (i) contracts for goods and services; and

142 (ii) contracts to engage:

143 (A) personnel, including consultants, actuaries, managers, counsel, and auditors for the
144 purpose of rendering professional, managerial, and technical assistance and advice; and

145 (B) one or more investment advisors, registered under the Investment Advisers Act of
146 1940, with at least 5,000 advisory clients and at least \$1,000,000,000 under management, to
147 provide investment advice to the board with respect to the assets held in each account;

148 ~~[(c)]~~ (b) adopt a corporate seal and change and amend it from time to time;

149 ~~[(d)]~~ (c) invest moneys within the program fund:

150 (i) (A) in any investments that are determined by the board to be appropriate [~~and are~~
151 ~~approved by the state treasurer~~]; or

152 (B) in mutual funds registered under the Investment Company Act of 1940, consistent
153 with the best interests of a designated beneficiary's higher education funding needs; and

154 (ii) are in compliance with rules of the State Money Management Council applicable to
155 gift funds;

156 [~~(e)~~] (d) invest moneys within the endowment fund in any investments that are:

157 (i) determined by the board to be appropriate;

158 (ii) approved by the state treasurer; and

159 (iii) in compliance with rules of the State Money Management Council applicable to
160 gift funds;

161 [~~(f)~~] (e) enter into agreements with account owners, any institution of higher education,
162 any federal or state agency, or other entity as required to implement this chapter;

163 [~~(g)~~] (f) solicit and accept any grants, gifts, legislative appropriations, and other
164 moneys from the state, any unit of federal, state, or local government, or any other person, firm,
165 partnership, or corporation for deposit to the administrative fund, endowment fund, or the
166 program fund;

167 [~~(h)~~] ~~enter into account agreements with account owners;~~

168 [~~(i)~~] ~~make payments to institutions of higher education pursuant to account agreements~~
169 ~~on behalf of beneficiaries;~~

170 [~~(j)~~] ~~make refunds to account owners upon the termination of account agreements~~
171 ~~pursuant to the provisions of this chapter;~~

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

174 [~~(l)~~] (g) make provision for the payment of costs of administration and operation of the
175 [~~Utah Educational Savings Plan Trust; and~~] plan;

176 [~~(m)~~] ~~carry out the duties and obligations of the Utah Educational Savings Plan Trust~~
177 ~~pursuant to this chapter.~~

178 (h) carry out studies and projections in order to advise account owners regarding
179 present and estimated future higher education costs and levels of financial participation in the
180 plan required in order to enable account owners to achieve their educational funding objective;

- 181 (i) participate in federal, state, local governmental, or private programs;
- 182 (j) create public and private partnerships, including investment or management
- 183 relationships with other 529 plans or entities;
- 184 (k) promulgate, impose, and collect administrative fees and charges in connection with
- 185 transactions of the plan, and provide for reasonable service charges;
- 186 (l) procure insurance:
- 187 (i) against any loss in connection with the property, assets, or activities of the plan; and
- 188 (ii) indemnifying any member of the board from personal loss or accountability arising
- 189 from liability resulting from a member's action or inaction as a member of the plan's board;
- 190 (m) administer outreach efforts to:
- 191 (i) market and publicize the plan and its products to existing and prospective account
- 192 owners; and
- 193 (ii) encourage economically challenged populations to save for post-secondary
- 194 education;
- 195 (n) adopt, trademark, and copyright names and materials for use in marketing and
- 196 publicizing the plan and its products;
- 197 (o) administer the funds of the plan;
- 198 (p) sue and be sued in its own name; and
- 199 (q) have and exercise any other powers or duties that are necessary or appropriate to
- 200 carry out and effectuate the purposes of this chapter.

201 Section 5. Section **53B-8a-104** is amended to read:

202 **53B-8a-104. Office facilities, clerical, and administrative support for the Utah**
203 **Educational Savings Plan.**

204 (1) The board shall provide to the [~~Utah Educational Savings Plan Trust~~] plan, by
205 agreement, administrative and clerical support and office facilities and space.

206 (2) Reasonable charges or fees may be levied against the [~~Utah Educational Savings~~
207 ~~Plan Trust~~] plan pursuant to the agreement for the services provided by the board.

208 Section 6. Section **53B-8a-105** is amended to read:

209 **53B-8a-105. Powers and duties of board.**

210 (1) The board has all powers necessary to carry out and effectuate the purposes,
211 objectives, and provisions of this chapter pertaining to the [~~Utah Educational Savings Plan~~

212 Trust, including the power to:] plan.

213 (2) The duties, responsibilities, funds, liabilities, and expenses of the board in oversight
214 and governance of the plan shall be maintained separate and apart from the board's other duties,
215 responsibilities, funds, liabilities, and expenses.

216 (3) The board shall make policies governing the:

217 (a) administration of the plan; and

218 (b) appointment and duties of the plan's executive director.

219 ~~[(1) engage:]~~

220 ~~[(a) one or more investment advisors, registered under the Investment Advisers Act of~~
221 ~~1940, with at least 5,000 advisory clients and at least \$1,000,000,000 under management, to~~
222 ~~provide investment advice to the board with respect to the assets held in each account;]~~

223 ~~[(b) an administrator to perform recordkeeping functions on behalf of the Utah~~
224 ~~Educational Savings Plan Trust; and]~~

225 ~~[(c) a custodian for the safekeeping of the assets of the Utah Educational Savings Plan~~
226 ~~Trust;]~~

227 ~~[(2) carry out studies and projections in order to advise account owners regarding~~
228 ~~present and estimated future higher education costs and levels of financial participation in the~~
229 ~~Utah Educational Savings Plan Trust required in order to enable account owners to achieve~~
230 ~~their educational funding objective;]~~

231 ~~[(3) contract for goods and services and engage personnel as necessary, including~~
232 ~~consultants, actuaries, managers, counsel, and auditors for the purpose of rendering~~
233 ~~professional, managerial, and technical assistance and advice, all of which contract obligations~~
234 ~~and services shall be payable from any moneys of the Utah Educational Savings Plan Trust;]~~

235 ~~[(4) participate in any other way in any federal, state, or local governmental program~~
236 ~~for the benefit of the Utah Educational Savings Plan Trust;]~~

237 ~~[(5) promulgate, impose, and collect administrative fees and charges in connection~~
238 ~~with transactions of the Utah Educational Savings Plan Trust, and provide for reasonable~~
239 ~~service charges, including penalties for cancellations and late payments;]~~

240 ~~[(6) procure insurance against any loss in connection with the property, assets, or~~
241 ~~activities of the Utah Educational Savings Plan Trust;]~~

242 ~~[(7) administer the funds of the Utah Educational Savings Plan Trust;]~~

243 ~~[(8) solicit and accept for the benefit of the endowment fund gifts, grants, and other~~
 244 ~~moneys, including general fund moneys from the state and grants from any federal or other~~
 245 ~~governmental agency;]~~

246 ~~[(9) procure insurance indemnifying any member of the board from personal loss or~~
 247 ~~accountability arising from liability resulting from a member's action or inaction as a member~~
 248 ~~of the board; and]~~

249 ~~[(10) make rules and regulations for the administration of the Utah Educational~~
 250 ~~Savings Plan Trust.]~~

251 Section 7. Section **53B-8a-106** is amended to read:

252 **53B-8a-106. Account agreements.**

253 The [~~Utah Educational Savings Plan Trust~~] plan may enter into account agreements
 254 with account owners on behalf of beneficiaries under the following terms and agreements:

255 (1) (a) An account agreement may require an account owner to agree to invest a
 256 specific amount of money in the [~~Utah Educational Savings Plan Trust~~] plan for a specific
 257 period of time for the benefit of a specific beneficiary, not to exceed an amount determined by
 258 the [~~program administrator~~] executive director.

259 (b) Account agreements may be amended to provide for adjusted levels of payments
 260 based upon changed circumstances or changes in educational plans.

261 (c) An account owner may make additional optional payments as long as the total
 262 payments for a specific beneficiary do not exceed the total estimated higher education costs as
 263 determined by the [~~program administrator~~] executive director.

264 (d) Subject to [~~Subsection~~] Subsections (1)(f) and (g), the maximum amount of a
 265 qualified investment that a corporation that is an account owner may subtract from unadjusted
 266 income for a taxable year in accordance with Title 59, Chapter 7, Corporate Franchise and
 267 Income Taxes, is [~~\$1,650~~] \$1,710 for each individual beneficiary for the taxable year beginning
 268 on or after January 1, [~~2008~~] 2010, but beginning on or before December 31, [~~2008~~] 2010.

269 (e) Subject to [~~Subsection~~] Subsections (1)(f) and (g), the maximum amount of a
 270 qualified investment that may be used as the basis for claiming a tax credit in accordance with
 271 Section 59-10-1017, is:

272 (i) for a resident or nonresident estate or trust that is an account owner, [~~\$1,650~~] \$1,710
 273 for each individual beneficiary for the taxable year beginning on or after January 1, [~~2008~~]

274 2010, but beginning on or before December 31, [~~2008~~] 2010;

275 (ii) for a resident or nonresident individual that is an account owner, other than a
276 husband and wife who are account owners and file a single return jointly under Title 59,
277 Chapter 10, Individual Income Tax Act, [~~\$1,650~~] \$1,710 for each individual beneficiary for the
278 taxable year beginning on or after January 1, [~~2008~~] 2010, but beginning on or before
279 December 31, [~~2008~~] 2010; or

280 (iii) for a husband and wife who are account owners and file a single return jointly
281 under Title 59, Chapter 10, Individual Income Tax Act, [~~\$3,300~~] \$3,420 for each individual
282 beneficiary:

283 (A) for the taxable year beginning on or after January 1, [~~2008~~] 2010, but beginning on
284 or before December 31, [~~2008~~] 2010; and

285 (B) regardless of whether the [~~Utah Educational Savings Plan Trust~~] plan has entered
286 into:

287 (I) a separate account agreement with each spouse; or

288 (II) a single account agreement with both spouses jointly.

289 (f) (i) For taxable years beginning on or after January 1, [~~2009~~] 2011, the [~~program~~
290 ~~administrator~~] executive director shall annually increase [~~or decrease~~] the maximum amount of
291 a qualified investment described in Subsections (1)(d) and (1)(e)(i) and (ii), by a percentage
292 equal to the [~~percentage difference between~~] increase in the consumer price index for the
293 preceding calendar year [~~and the consumer price index for the calendar year 2007~~].

294 (ii) After making an increase [~~or decrease~~] required by Subsection (1)(f)(i), the
295 [~~program administrator~~] executive director shall:

296 (A) round the maximum amount of the qualified investments described in Subsections
297 (1)(d) and (1)(e)(i) and (ii) increased [~~or decreased~~] under Subsection (1)(f)(i) to the nearest 10
298 dollar increment; and

299 (B) increase [~~or decrease~~] the maximum amount of the qualified investment described
300 in Subsection (1)(e)(iii) so that the maximum amount of the qualified investment described in
301 Subsection (1)(e)(iii) is equal to the product of:

302 (I) the maximum amount of the qualified investment described in Subsection (1)(e)(ii)
303 as rounded under Subsection (1)(f)(ii)(A); and

304 (II) two.

305 (iii) For purposes of Subsections (1)(f)(i) and (ii), the ~~[program administrator]~~
306 executive director shall calculate the consumer price index as provided in Sections 1(f)(4) and
307 1(f)(5), Internal Revenue Code.

308 (g) For taxable years beginning on or after January 1, 2011, the executive director shall
309 keep the previous year's maximum amount of a qualified investment described in Subsections
310 (1)(d) and (1)(e)(i) and (ii) if the consumer price index for the preceding calendar year
311 decreases.

312 (2) (a) Beneficiaries designated in account agreements must be designated after birth
313 and before age 19 for an account owner to:

314 (i) subtract a qualified investment from income under Title 59, Chapter 7, Corporate
315 Franchise and Income Taxes; or

316 (ii) use a qualified investment as the basis for claiming a tax credit in accordance with
317 Section 59-10-1017.

318 (b) Account owners may designate a beneficiary age 19 or older, but investments for
319 that beneficiary are not eligible to be:

320 (i) subtracted from income under Title 59, Chapter 7, Corporate Franchise and Income
321 Taxes; or

322 (ii) used as the basis for claiming a tax credit in accordance with Section 59-10-1017.

323 (3) Each account agreement shall state clearly that there are no guarantees regarding
324 moneys in the ~~[Utah Educational Savings Plan Trust]~~ plan as to the return of principal and that
325 losses could occur.

326 (4) Each account agreement shall provide that:

327 (a) a contributor to, or designated beneficiary under, an account agreement may not
328 direct the investment of any contributions or earnings on contributions;

329 (b) any part of the money in any account may not be used as security for a loan; and

330 (c) an account owner may not borrow from the ~~[Utah Educational Savings Plan Trust]~~
331 plan.

332 (5) The execution of an account agreement by the ~~[trust]~~ plan may not guarantee in any
333 way that higher education costs will be equal to projections and estimates provided by the
334 ~~[Utah Educational Savings Plan Trust]~~ plan or that the beneficiary named in any account
335 agreement will:

- 336 (a) be admitted to an institution of higher education;
- 337 (b) if admitted, be determined a resident for tuition purposes by the institution of
- 338 higher education;
- 339 (c) be allowed to continue attendance at the institution of higher education following
- 340 admission; or
- 341 (d) graduate from the institution of higher education.

342 (6) A beneficiary may be changed as permitted by the rules and regulations of the board
343 upon written request of the account owner prior to the date of admission of any beneficiary
344 under an account agreement by an institution of higher education so long as the substitute
345 beneficiary is eligible for participation.

346 (7) An account agreement may be freely amended throughout the term of the account
347 agreement in order to enable an account owner to increase or decrease the level of
348 participation, change the designation of beneficiaries, and carry out similar matters as
349 authorized by rule.

350 (8) Each account agreement shall provide that:

351 (a) the account agreement may be canceled upon the terms and conditions, and upon
352 payment of the fees and costs set forth and contained in the board's rules and regulations; and

353 (b) the ~~[program administrator]~~ executive director may amend the agreement
354 unilaterally and retroactively, if necessary, to maintain the ~~[Utah Educational Savings Plan~~
355 ~~Trust]~~ plan as a qualified tuition program under Section 529, Internal Revenue Code.

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

357 **53B-8a-107. Program, administrative, and endowment funds -- Investment and**
358 **payments from funds.**

359 (1) The ~~[board]~~ plan shall segregate moneys received by the ~~[Utah Educational Savings~~
360 ~~Plan Trust]~~ plan into three funds, the program fund, the administrative fund, and the
361 endowment fund.

362 (2) Transfers may be made from the program fund to the administrative fund to pay
363 operating costs:

364 (a) associated with administering the ~~[Utah Educational Savings Plan Trust]~~ plan and
365 as required under Sections 53B-8a-103 through 53B-8a-105; and

366 (b) as included in the budget approved by the board ~~[of directors of the Utah~~

367 Educational Savings Plan Trust].

368 (3) (a) All moneys paid by account owners in connection with account agreements
369 shall be deposited as received into separate accounts within the program fund which shall be
370 [promptly] invested and accounted for separately.

371 (b) Moneys accrued by account owners in the program fund [~~of the Utah Educational~~
372 ~~Savings Plan Trust~~] may be used for:

- 373 (i) payments to any institution of higher education;
- 374 (ii) payments to the account owner or beneficiary;
- 375 (iii) payments to another 529 plan; or
- 376 (iv) other expenditures or transfers made in accordance with the account agreement.

377 (4) (a) All moneys received by the [~~Utah Educational Savings Plan Trust~~] plan from
378 the proceeds of gifts and other endowments for the purposes of the [~~Utah Educational Savings~~
379 ~~Plan Trust~~] plan shall be:

- 380 (i) deposited, according to the nature of the donation, as received into the endowment
381 fund[~~, which shall be promptly~~] or the administrative fund; and
- 382 (ii) invested and accounted for separately.

383 (b) Any gifts, grants, or donations made by any governmental unit or any person, firm,
384 partnership, or corporation to the [~~Utah Educational Savings Plan Trust~~] plan for deposit to the
385 endowment fund is a grant, gift, or donation to the state for the accomplishment of a valid
386 public eleemosynary, charitable, and educational purpose and is not included in the income of
387 the donor for Utah tax purposes.

388 (c) The endowment fund or the administrative fund may be used to enhance the savings
389 of low income account owners investing in the [~~Utah Educational Savings Plan Trust~~] plan, for
390 scholarships, or for other college savings incentive programs as approved by the board.

391 (d) Transfers may be made from the endowment fund to the administrative fund upon
392 approval by the board.

393 (e) Endowment fund earnings not accruing to a beneficiary under an account agreement
394 or not transferred to the administrative fund shall be reinvested in the endowment fund.

395 Section 9. Section **53B-8a-108** is amended to read:

396 **53B-8a-108. Cancellation of agreements.**

397 (1) Any account owner may cancel an account agreement at will.

398 (2) If an account agreement is cancelled by the account owner, the current account
399 balance shall be disbursed to the account owner less:

400 (a) an administrative refund fee, which may be charged by the [~~Utah Educational~~
401 ~~Savings Plan Trust~~] plan, except as provided in Subsection (3); and

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

403 (3) An administration refund fee may not be levied by the [~~Utah Educational Savings~~
404 ~~Plan Trust~~] plan if the account agreement is cancelled due to:

405 (a) the death of the beneficiary; or

406 (b) the permanent disability or mental incapacity of the beneficiary.

407 Section 10. Section **53B-8a-109** is amended to read:

408 **53B-8a-109. Repayment and ownership of funds in the account -- Transfer of**
409 **ownership rights.**

410 (1) (a) The account owner retains ownership of funds in the account until:

411 (i) funds are used to pay higher education costs for the beneficiary;

412 (ii) funds are otherwise disbursed;

413 (iii) funds are transferred for administrative costs; or

414 (iv) the account is closed.

415 (b) Funds in the account shall be considered to be held in trust for the benefit of the
416 beneficiary.

417 (2) Any amounts that may be paid pursuant to the [~~Utah Educational Savings Plan~~
418 ~~Trust~~] plan that are not listed in this section are owned by the [~~Utah Educational Savings Plan~~
419 ~~Trust~~] plan.

420 (3) (a) An account owner may transfer ownership rights to another eligible person.

421 (b) The transfer shall be affected and the property distributed in accordance with
422 administrative regulations promulgated by the board or the terms of the account agreement.

423 Section 11. Section **53B-8a-110** is amended to read:

424 **53B-8a-110. Effect of payments on determination of need and eligibility for**
425 **student aid.**

426 No student loan program, student grant program, or other program administered by any
427 agency of the state, except as may be otherwise provided by federal law or the provisions of
428 any specific grant applicable to that law, shall take into account and consider amounts available

429 for the payment of higher education costs pursuant to the [~~Utah Educational Savings Plan~~
430 ~~Trust~~] plan in determining need and eligibility for student aid.

431 Section 12. Section **53B-8a-111** is amended to read:

432 **53B-8a-111. Annual audit of financial statements -- Information to governor and**
433 **Legislature.**

434 (1) The financial statements of the [~~Utah Educational Savings Plan Trust~~] plan shall be
435 audited annually by the state auditor or the state auditor's designee and reported in accordance
436 with generally accepted accounting principles.

437 (2) The [~~board~~] plan shall submit to the governor and the Legislature:

438 (a) upon request, any studies or evaluations of the [~~Utah Educational Savings Plan~~
439 ~~Trust~~] plan;

440 (b) upon request, a summary of the benefits provided by the [~~Utah Educational Savings~~
441 ~~Plan Trust~~] plan including the number of participants and beneficiaries in the [~~Utah~~
442 ~~Educational Savings Plan Trust~~] plan; and

443 (c) upon request, any other information which is relevant in order to make a full, fair,
444 and effective disclosure of the operations of the [~~Utah Educational Savings Plan Trust~~] plan.

445 Section 13. Section **53B-8a-112** is amended to read:

446 **53B-8a-112. Tax considerations.**

447 (1) For tax purposes the property of the [~~Utah Educational Savings Plan Trust~~] plan
448 and its income are governed by Section 59-10-201.

449 (2) The tax commission, in consultation with the board and the plan, may adopt rules
450 necessary to monitor and implement the tax provisions referred to in Subsection (1) as related
451 to the property of the [~~Utah Educational Savings Plan Trust~~] plan and its income.

452 Section 14. Section **53B-8a-113** is amended to read:

453 **53B-8a-113. Property rights to plan assets.**

454 (1) The assets of the [~~Utah Educational Savings Plan Trust~~] plan, including the
455 program fund and the endowment fund, shall at all times be preserved, invested, and expended
456 solely and only for the purposes of the [~~Utah Educational Savings Plan Trust~~] plan and shall be
457 held in trust for the account owners and beneficiaries.

458 (2) No property rights in the [~~Utah Educational Savings Plan Trust~~] plan shall exist in
459 favor of the state.

460 (3) The assets may not be transferred or used by the state for any purposes other than
461 the purposes of the [~~Utah Educational Savings Plan Trust~~] plan.

462 Section 15. Section **59-1-403** is amended to read:

463 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

464 (1) (a) Any of the following may not divulge or make known in any manner any
465 information gained by that person from any return filed with the commission:

466 (i) a tax commissioner;

467 (ii) an agent, clerk, or other officer or employee of the commission; or

468 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or
469 town.

470 (b) An official charged with the custody of a return filed with the commission is not
471 required to produce the return or evidence of anything contained in the return in any action or
472 proceeding in any court, except:

473 (i) in accordance with judicial order;

474 (ii) on behalf of the commission in any action or proceeding under:

475 (A) this title; or

476 (B) other law under which persons are required to file returns with the commission;

477 (iii) on behalf of the commission in any action or proceeding to which the commission
478 is a party; or

479 (iv) on behalf of any party to any action or proceeding under this title if the report or
480 facts shown by the return are directly involved in the action or proceeding.

481 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may
482 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically
483 pertinent to the action or proceeding.

484 (2) This section does not prohibit:

485 (a) a person or that person's duly authorized representative from receiving a copy of
486 any return or report filed in connection with that person's own tax;

487 (b) the publication of statistics as long as the statistics are classified to prevent the
488 identification of particular reports or returns; and

489 (c) the inspection by the attorney general or other legal representative of the state of the
490 report or return of any taxpayer:

- 491 (i) who brings action to set aside or review a tax based on the report or return;
- 492 (ii) against whom an action or proceeding is contemplated or has been instituted under
- 493 this title; or
- 494 (iii) against whom the state has an unsatisfied money judgment.
- 495 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the
- 496 commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative
- 497 Rulemaking Act, provide for a reciprocal exchange of information with:
- 498 (i) the United States Internal Revenue Service; or
- 499 (ii) the revenue service of any other state.
- 500 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
- 501 corporate franchise tax, the commission may by rule, made in accordance with Title 63G,
- 502 Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and
- 503 other written statements with the federal government, any other state, any of the political
- 504 subdivisions of another state, or any political subdivision of this state, except as limited by
- 505 Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal
- 506 government grant substantially similar privileges to this state.
- 507 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and
- 508 corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3,
- 509 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the
- 510 identity and other information of taxpayers who have failed to file tax returns or to pay any tax
- 511 due.
- 512 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and
- 513 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as
- 514 requested by the executive secretary, any records, returns, or other information filed with the
- 515 commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5
- 516 regarding the environmental assurance program participation fee.
- 517 (e) Notwithstanding Subsection (1), at the request of any person the commission shall
- 518 provide that person sales and purchase volume data reported to the commission on a report,
- 519 return, or other information filed with the commission under:
- 520 (i) Chapter 13, Part 2, Motor Fuel; or
- 521 (ii) Chapter 13, Part 4, Aviation Fuel.

522 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,
523 as defined in Section 59-22-202, the commission shall report to the manufacturer:

524 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
525 manufacturer and reported to the commission for the previous calendar year under Section
526 59-14-407; and

527 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
528 manufacturer for which a tax refund was granted during the previous calendar year under
529 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

530 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,
531 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited
532 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

533 (h) Notwithstanding Subsection (1), the commission may:

534 (i) provide to the Division of Consumer Protection within the Department of
535 Commerce and the attorney general data:

536 (A) reported to the commission under Section 59-14-212; or

537 (B) related to a violation under Section 59-14-211; and

538 (ii) upon request provide to any person data reported to the commission under
539 Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

540 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee
541 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning
542 and Budget, provide to the committee or office the total amount of revenues collected by the
543 commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period
544 specified by the committee or office.

545 (j) Notwithstanding Subsection (1), the commission shall make the directory required
546 by Section 59-14-603 available for public inspection.

547 (k) Notwithstanding Subsection (1), the commission may share information with
548 federal, state, or local agencies as provided in Subsection 59-14-606(3).

549 (l) (i) Notwithstanding Subsection (1), the commission shall provide the Office of
550 Recovery Services within the Department of Human Services any relevant information
551 obtained from a return filed under Chapter 10, Individual Income Tax Act, regarding a taxpayer
552 who has become obligated to the Office of Recovery Services.

553 (ii) The information described in Subsection (3)(1)(i) may be provided by the Office of
554 Recovery Services to any other state's child support collection agency involved in enforcing
555 that support obligation.

556 (m) (i) Notwithstanding Subsection (1), upon request from the state court
557 administrator, the commission shall provide to the state court administrator, the name, address,
558 telephone number, county of residence, and Social Security number on resident returns filed
559 under Chapter 10, Individual Income Tax Act.

560 (ii) The state court administrator may use the information described in Subsection
561 (3)(m)(i) only as a source list for the master jury list described in Section 78B-1-106.

562 (n) Notwithstanding Subsection (1), the commission shall at the request of a
563 committee, commission, or task force of the Legislature provide to the committee, commission,
564 or task force of the Legislature any information relating to a tax imposed under Chapter 9,
565 Taxation of Admitted Insurers, relating to the study required by Section 59-9-101.

566 (o) (i) As used in this Subsection (3)(o), "office" means the:

567 (A) Office of the Legislative Fiscal Analyst; or

568 (B) Office of Legislative Research and General Counsel.

569 (ii) Notwithstanding Subsection (1) and except as provided in Subsection (3)(o)(iii),
570 the commission shall at the request of an office provide to the office all information:

571 (A) gained by the commission; and

572 (B) required to be attached to or included in returns filed with the commission.

573 (iii) (A) An office may not request and the commission may not provide to an office a
574 person's:

575 (I) address;

576 (II) name;

577 (III) Social Security number; or

578 (IV) taxpayer identification number.

579 (B) The commission shall in all instances protect the privacy of a person as required by
580 Subsection (3)(o)(iii)(A).

581 (iv) An office may provide information received from the commission in accordance
582 with this Subsection (3)(o) only:

583 (A) as:

584 (I) a fiscal estimate;

585 (II) fiscal note information; or

586 (III) statistical information; and

587 (B) if the information is classified to prevent the identification of a particular return.

588 (v) (A) A person may not request information from an office under Title 63G, Chapter

589 2, Government Records Access and Management Act, or this section, if that office received the

590 information from the commission in accordance with this Subsection (3)(o).

591 (B) An office may not provide to a person that requests information in accordance with

592 Subsection (3)(o)(v)(A) any information other than the information the office provides in

593 accordance with Subsection (3)(o)(iv).

594 (p) Notwithstanding Subsection (1), the commission may provide to the governing

595 board of the agreement or a taxing official of another state, the District of Columbia, the United

596 States, or a territory of the United States:

597 (i) the following relating to an agreement sales and use tax:

598 (A) information contained in a return filed with the commission;

599 (B) information contained in a report filed with the commission;

600 (C) a schedule related to Subsection (3)(p)(i)(A) or (B); or

601 (D) a document filed with the commission; or

602 (ii) a report of an audit or investigation made with respect to an agreement sales and

603 use tax.

604 (q) Notwithstanding Subsection (1), the commission may provide information

605 concerning a taxpayer's state income tax return or state income tax withholding information to

606 the Driver License Division if the Driver License Division:

607 (i) requests the information; and

608 (ii) provides the commission with a signed release form from the taxpayer allowing the

609 Driver License Division access to the information.

610 (r) Notwithstanding Subsection (1), the commission shall provide to the Utah State 911

611 Committee the information requested by the Utah State 911 Committee under Subsection

612 53-10-602(3).

613 (s) Notwithstanding Subsection (1), the commission may provide to the Utah

614 Educational Savings Plan [Trust] information related to a resident or nonresident individual's

615 contribution to a Utah Educational Savings Plan account as designated on the resident or
616 nonresident's individual income tax return under Section 59-10-1313.

617 (4) (a) Reports and returns shall be preserved for at least three years.

618 (b) After the three-year period provided in Subsection (4)(a) the commission may
619 destroy a report or return.

620 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.

621 (b) If the person described in Subsection (5)(a) is an officer or employee of the state,
622 the person shall be dismissed from office and be disqualified from holding public office in this
623 state for a period of five years thereafter.

624 (c) Notwithstanding Subsection (5)(a) or (b), an office that requests information in
625 accordance with Subsection (3)(o)(iii) or a person that requests information in accordance with
626 Subsection (3)(o)(v):

627 (i) is not guilty of a class A misdemeanor; and

628 (ii) is not subject to:

629 (A) dismissal from office in accordance with Subsection (5)(b); or

630 (B) disqualification from holding public office in accordance with Subsection (5)(b).

631 (6) Except as provided in Section 59-1-404, this part does not apply to the property tax.
632 Section 16. Section **59-7-105** is amended to read:

633 **59-7-105. Additions to unadjusted income.**

634 In computing adjusted income the following amounts shall be added to unadjusted
635 income:

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

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

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

641 (b) to another state of the United States, a foreign country, a United States possession,
642 or the Commonwealth of Puerto Rico for taxes imposed for the privilege of doing business, or
643 exercising its corporate franchise, including income, franchise, corporate stock and business
644 and occupation taxes;

645 (3) the safe harbor lease adjustment required under Subsections 59-7-111(1)(a) and

- 646 (2)(a);
- 647 (4) capital losses that have been deducted on a Utah corporate return in previous years;
- 648 (5) any deduction on the federal return that has been previously deducted on the Utah
649 return;
- 650 (6) the amount of contributions claimed as a tax credit pursuant to Section 59-7-602;
- 651 (7) the amount of the deduction taken pursuant to Section 59-7-603 for sophisticated
652 technological equipment;
- 653 (8) charitable contributions, to the extent deducted on the federal return when
654 determining federal taxable income;
- 655 (9) the amount of gain or loss determined under Section 59-7-114 relating to a target
656 corporation under Section 338, Internal Revenue Code, unless such gain or loss has already
657 been included in the unadjusted income of the target corporation;
- 658 (10) the amount of gain or loss determined under Section 59-7-115 relating to
659 corporations treated for federal purposes as having disposed of its assets under Section 336(e),
660 Internal Revenue Code, unless such gain or loss has already been included in the unadjusted
661 income of the target corporation;
- 662 (11) adjustments to gains, losses, depreciation expense, amortization expense, and
663 similar items due to a difference between basis for federal purposes and basis as computed
664 under Section 59-7-107;
- 665 (12) the amount withdrawn under Title 53B, Chapter 8a, [~~Higher Education Savings~~
666 ~~Incentive Program~~] Utah Educational Savings Plan, from the account of a corporation that is an
667 account owner as defined in Section 53B-8a-102, for the taxable year for which the amount is
668 withdrawn, if that amount withdrawn from the account of the corporation that is the account
669 owner:
- 670 (a) is not expended for:
- 671 (i) higher education costs as defined in Section 53B-8a-102; [~~and~~] or
- 672 (ii) a payment or distribution that qualifies as an exception to the additional tax for
673 distributions not used for educational expenses provided in Sections 529(c) and 530(d),
674 Internal Revenue Code; and
- 675 (b) is subtracted by the corporation:
- 676 (i) that is the account owner; and

677 (ii) in accordance with Subsection 59-7-106(18); and
678 (13) the amount of the deduction for dividends paid, as defined in Section 561, Internal
679 Revenue Code, that is allowed under Section 857(b)(2)(B), Internal Revenue Code, in
680 computing the taxable income of a captive real estate investment trust, if that captive real estate
681 investment trust is subject to federal income taxation.

682 Section 17. Section **59-7-106** is amended to read:

683 **59-7-106. Subtractions from unadjusted income.**

684 In computing adjusted income the following amounts shall be subtracted from
685 unadjusted income:

686 (1) the foreign dividend gross-up included in gross income for federal income tax
687 purposes under Section 78, Internal Revenue Code;

688 (2) the net capital loss, as defined for federal purposes, if the taxpayer elects to deduct
689 the loss on the current Utah return. The deduction shall be made by claiming the deduction on
690 the current Utah return which shall be filed by the due date of the return, including extensions.

691 For the purposes of this Subsection (2) all capital losses in a given year must be:

692 (a) deducted in the year incurred; or

693 (b) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue
694 Code;

695 (3) the decrease in salary expense deduction for federal income tax purposes due to
696 claiming the federal jobs credit under Section 51, Internal Revenue Code;

697 (4) the decrease in qualified research and basic research expense deduction for federal
698 income tax purposes due to claiming the federal research and development credit under Section
699 41, Internal Revenue Code;

700 (5) the decrease in qualified clinical testing expense deduction for federal income tax
701 purposes due to claiming the federal orphan drug credit under Section 28, Internal Revenue
702 Code;

703 (6) any decrease in any expense deduction for federal income tax purposes due to
704 claiming any other federal credit;

705 (7) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and
706 (2)(b);

707 (8) any income on the federal corporate return that has been previously taxed by Utah;

708 (9) amounts included in federal taxable income that are due to refunds of taxes
709 imposed for the privilege of doing business, or exercising a corporate franchise, including
710 income, franchise, corporate stock and business and occupation taxes paid by the corporation to
711 Utah, another state of the United States, a foreign country, a United States possession, or the
712 Commonwealth of Puerto Rico to the extent that the taxes were added to unadjusted income
713 under Section 59-7-105;

714 (10) charitable contributions, to the extent allowed as a subtraction under Section
715 59-7-109;

716 (11) (a) 50% of the dividends deemed received or received from subsidiaries which are
717 members of the unitary group and are organized or incorporated outside of the United States
718 unless such subsidiaries are included in a combined report under Section 59-7-402 or 59-7-403.

719 In arriving at the amount of the dividend exclusion, the taxpayer shall first deduct from the
720 dividends deemed received or received, the expense directly attributable to those dividends.
721 Interest expense attributable to excluded dividends shall be determined by multiplying interest
722 expense by a fraction, the numerator of which is the taxpayer's average investment in such
723 dividend paying subsidiaries, and the denominator of which is the taxpayer's average total
724 investment in assets;

725 (b) in determining income apportionable to this state, a portion of the factors of a
726 foreign subsidiary whose dividends are partially excluded under Subsection (11)(a) shall be
727 included in the combined report factors. The portion to be included shall be determined by
728 multiplying each factor of the foreign subsidiary by a fraction, but not to exceed 100%, the
729 numerator of which is the amount of the dividend paid by the foreign subsidiary which is
730 included in adjusted income, and the denominator of which is the current year earnings and
731 profits of the foreign subsidiary as determined under the Internal Revenue Code;

732 (12) (a) 50% of the adjusted income of a foreign operating company unless the
733 taxpayer has elected to file a worldwide combined report as provided in Section 59-7-403. For
734 purposes of this Subsection (12), when calculating the adjusted income of a foreign operating
735 company, a foreign operating company may not deduct the subtractions allowable under this
736 Subsection (12) and Subsection (11);

737 (b) in determining income apportionable to this state, the factors for a foreign operating
738 company shall be included in the combined report factors in the same percentage its adjusted

739 income is included in the combined adjusted income;

740 (13) the amount of gain or loss which is included in unadjusted income but not
741 recognized for federal purposes on stock sold or exchanged by a member of a selling
742 consolidated group as defined in Section 338, Internal Revenue Code, if an election has been
743 made pursuant to Section 338(h)(10), Internal Revenue Code;

744 (14) the amount of gain or loss which is included in unadjusted income but not
745 recognized for federal purposes on stock sold, exchanged, or distributed by a corporation
746 pursuant to Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal
747 Revenue Code, has been made for federal purposes;

748 (15) (a) adjustments to gains, losses, depreciation expense, amortization expense, and
749 similar items due to a difference between basis for federal purposes and basis as computed
750 under Section 59-7-107; and

751 (b) if there has been a reduction in federal basis for a federal tax credit where there is
752 no corresponding Utah tax credit, the amount of the reduction in basis shall be allowed as an
753 expense in the year of the federal credit;

754 (16) any interest expense not deducted on the federal corporate return under Section
755 265(b) or 291(e), Internal Revenue Code;

756 (17) 100% of the dividends received from subsidiaries which are insurance companies
757 exempt from this chapter under Subsection 59-7-102(1)(c) and are under common ownership;

758 (18) subject to Subsection 59-7-105(12), the amount of a qualified investment as
759 defined in Section 53B-8a-102 that:

760 (a) a corporation that is an account owner as defined in Section 53B-8a-102 makes
761 during the taxable year;

762 (b) the corporation described in Subsection (18)(a) does not deduct on a federal
763 corporation income tax return; and

764 (c) does not exceed the maximum amount of the qualified investment that may be
765 subtracted from unadjusted income for a taxable year in accordance with [~~Subsections~~
766 Subsection 53B-8a-106(1)]~~(d) and (f)~~; and

767 (19) for purposes of income included in a combined report under Part 4, Combined
768 Reporting, the entire amount of the dividends a member of a unitary group receives or is
769 considered to receive from a captive real estate investment trust.

770 Section 18. Section **59-10-114** is amended to read:

771 **59-10-114. Additions to and subtractions from adjusted gross income of an**
772 **individual.**

773 (1) There shall be added to adjusted gross income of a resident or nonresident
774 individual:

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

777 (b) the amount of a child's income calculated under Subsection (4) that:

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

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

782 (c) (i) a withdrawal from a medical care savings account and any penalty imposed for
783 the taxable year if:

784 (A) the resident or nonresident individual does not deduct the amounts on the resident
785 or nonresident individual's federal individual income tax return under Section 220, Internal
786 Revenue Code;

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

788 (C) the withdrawal is:

789 (I) subtracted on a return the resident or nonresident individual files under this chapter
790 for a taxable year beginning on or before December 31, 2007; or

791 (II) used as the basis for a resident or nonresident individual to claim a tax credit under
792 Section 59-10-1021;

793 (ii) a disbursement required to be added to adjusted gross income in accordance with
794 Subsection 31A-32a-105(3); or

795 (iii) an amount required to be added to adjusted gross income in accordance with
796 Subsection 31A-32a-105(5)(c);

797 (d) the amount withdrawn under Title 53B, Chapter 8a, [~~Higher Education Savings~~
798 ~~Incentive Program~~] Utah Educational Savings Plan, from the account of a resident or
799 nonresident individual who is an account owner as defined in Section 53B-8a-102, for the
800 taxable year for which the amount is withdrawn, if that amount withdrawn from the account of

801 the resident or nonresident individual who is the account owner:

802 (i) is not expended for;

803 (A) higher education costs as defined in Section 53B-8a-102; ~~and~~ or

804 (B) a payment or distribution that qualifies as an exception to the additional tax for

805 distributions not used for educational expenses provided in Sections 529(c) and 530(d),

806 Internal Revenue Code; and

807 (ii) is:

808 (A) subtracted by the resident or nonresident individual:

809 (I) who is the account owner; and

810 (II) on the resident or nonresident individual's return filed under this chapter for a

811 taxable year beginning on or before December 31, 2007; or

812 (B) used as the basis for the resident or nonresident individual who is the account

813 owner to claim a tax credit under Section 59-10-1017;

814 (e) except as provided in Subsection ~~[(6)]~~ (5), for bonds, notes, and other evidences of

815 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other

816 evidences of indebtedness issued by one or more of the following entities:

817 (i) a state other than this state;

818 (ii) the District of Columbia;

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

820 (iv) an agency or instrumentality of an entity described in Subsections (1)(e)(i) through

821 (iii);

822 (f) subject to Subsection (2)(c), any distribution received by a resident beneficiary of a

823 resident trust of income that was taxed at the trust level for federal tax purposes, but was

824 subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(b);

825 (g) any distribution received by a resident beneficiary of a nonresident trust of

826 undistributed distributable net income realized by the trust on or after January 1, 2004, if that

827 undistributed distributable net income was taxed at the trust level for federal tax purposes, but

828 was not taxed at the trust level by any state, with undistributed distributable net income

829 considered to be distributed from the most recently accumulated undistributed distributable net

830 income; and

831 (h) any adoption expense:

832 (i) for which a resident or nonresident individual receives reimbursement from another
833 person; and

834 (ii) to the extent to which the resident or nonresident individual subtracts that adoption
835 expense:

836 (A) on a return filed under this chapter for a taxable year beginning on or before
837 December 31, 2007; or

838 (B) from federal taxable income on a federal individual income tax return.

839 (2) There shall be subtracted from adjusted gross income of a resident or nonresident
840 individual:

841 (a) the difference between:

842 (i) the interest or a dividend on an obligation or security of the United States or an
843 authority, commission, instrumentality, or possession of the United States, to the extent that
844 interest or dividend is:

845 (A) included in adjusted gross income for federal income tax purposes for the taxable
846 year; and

847 (B) exempt from state income taxes under the laws of the United States; and

848 (ii) any interest on indebtedness incurred or continued to purchase or carry the
849 obligation or security described in Subsection (2)(a)(i);

850 (b) for taxable years beginning on or after January 1, 2000, if the conditions of
851 Subsection (3)(a) are met, the amount of income derived by a Ute tribal member:

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

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

855 (c) an amount received by a resident or nonresident individual or distribution received
856 by a resident or nonresident beneficiary of a resident trust:

857 (i) if that amount or distribution constitutes a refund of taxes imposed by:

858 (A) a state; or

859 (B) the District of Columbia; and

860 (ii) to the extent that amount or distribution is included in adjusted gross income for
861 that taxable year on the federal individual income tax return of the resident or nonresident
862 individual or resident or nonresident beneficiary of a resident trust;

- 863 (d) the amount of a railroad retirement benefit:
- 864 (i) paid:
- 865 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
- 866 seq.;
- 867 (B) to a resident or nonresident individual; and
- 868 (C) for the taxable year; and
- 869 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
- 870 that resident or nonresident individual's federal individual income tax return for that taxable
- 871 year; and
- 872 (e) an amount:
- 873 (i) received by an enrolled member of an American Indian tribe; and
- 874 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
- 875 part on that amount in accordance with:
- 876 (A) federal law;
- 877 (B) a treaty; or
- 878 (C) a final decision issued by a court of competent jurisdiction.
- 879 (3) (a) A subtraction for an amount described in Subsection (2)(b) is allowed only if:
- 880 (i) the taxpayer is a Ute tribal member; and
- 881 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
- 882 requirements of this Subsection (3).
- 883 (b) The agreement described in Subsection (3)(a):
- 884 (i) may not:
- 885 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
- 886 (B) provide a subtraction under this section greater than or different from the
- 887 subtraction described in Subsection (2)(b); or
- 888 (C) affect the power of the state to establish rates of taxation; and
- 889 (ii) shall:
- 890 (A) provide for the implementation of the subtraction described in Subsection (2)(b);
- 891 (B) be in writing;
- 892 (C) be signed by:
- 893 (I) the governor; and

894 (II) the chair of the Business Committee of the Ute tribe;
895 (D) be conditioned on obtaining any approval required by federal law; and
896 (E) state the effective date of the agreement.

897 (c) (i) The governor shall report to the commission by no later than February 1 of each
898 year regarding whether or not an agreement meeting the requirements of this Subsection (3) is
899 in effect.

900 (ii) If an agreement meeting the requirements of this Subsection (3) is terminated, the
901 subtraction permitted under Subsection (2)(b) is not allowed for taxable years beginning on or
902 after the January 1 following the termination of the agreement.

903 (d) For purposes of Subsection (2)(b) and in accordance with Title 63G, Chapter 3,
904 Utah Administrative Rulemaking Act, the commission may make rules:

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

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

909 (4) (a) For purposes of this Subsection (4), "Form 8814" means:

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

912 (ii) (A) a form designated by the commission in accordance with Subsection
913 (4)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of federal
914 individual income taxes the information contained on 2000 Form 8814 is reported on a form
915 other than Form 8814; and

916 (B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter
917 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as
918 being substantially similar to 2000 Form 8814 if for purposes of federal individual income
919 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
920 8814.

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

923 (i) the lesser of:

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

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

926 (I) the child's taxable interest;

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

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

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

930 (5) Notwithstanding Subsection (1)(e), interest from bonds, notes, and other evidences
931 of indebtedness issued by an entity described in Subsections (1)(e)(i) through (iv) may not be
932 added to adjusted gross income of a resident or nonresident individual if, as annually
933 determined by the commission:

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

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

940 (i) the entity; or

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

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

943 Section 19. Section **59-10-201** is amended to read:

944 **59-10-201. Taxation of resident trusts and estates.**

945 (1) Except as provided in Subsection (2), a tax determined in accordance with the rate
946 prescribed by Subsection 59-10-104(2)(b) is imposed for each taxable year on the state taxable
947 income of each resident estate or trust.

948 (2) The following are not subject to a tax imposed by this part:

949 (a) a resident estate or trust that is not required to file a federal income tax return for
950 estates and trusts for the taxable year; or

951 (b) a resident trust taxed as a corporation.

952 (3) A resident estate or trust shall be allowed the credit provided in Section
953 59-10-1003, relating to an income tax imposed by another state, except that the limitation shall
954 be computed by reference to the taxable income of the estate or trust.

955 (4) The property of the Utah Educational Savings Plan [trust] established in Title 53B,

956 Chapter 8a, [~~Higher Education Savings Incentive Program~~] Utah Educational Savings Plan, and
957 its income from operations and investments are exempt from all taxation by the state under this
958 chapter.

959 Section 20. Section **59-10-202** is amended to read:

960 **59-10-202. Additions to and subtractions from unadjusted income of a resident or**
961 **nonresident estate or trust.**

962 (1) There shall be added to unadjusted income of a resident or nonresident estate or
963 trust:

964 (a) a lump sum distribution allowable as a deduction under Section 402(d)(3), Internal
965 Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in
966 determining adjusted gross income;

967 (b) except as provided in Subsection (3), for bonds, notes, and other evidences of
968 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other
969 evidences of indebtedness issued by one or more of the following entities:

970 (i) a state other than this state;

971 (ii) the District of Columbia;

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

973 (iv) an agency or instrumentality of an entity described in Subsections (1)(b)(i) through
974 (iii);

975 (c) any portion of federal taxable income for a taxable year if that federal taxable
976 income is derived from stock:

977 (i) in an S corporation; and

978 (ii) that is held by an electing small business trust;

979 (d) the amount withdrawn under Title 53B, Chapter 8a, [~~Higher Education Savings~~

980 ~~Incentive Program~~] Utah Educational Savings Plan, from the account of a resident or

981 nonresident estate or trust that is an account owner as defined in Section 53B-8a-102, for the

982 taxable year for which the amount is withdrawn, if that amount withdrawn from the account of

983 the resident or nonresident estate or trust that is the account owner:

984 (i) is not expended for;

985 (A) higher education costs as defined in Section 53B-8a-102; [and] or

986 (B) a payment or distribution that qualifies as an exception to the additional tax for

987 distributions not used for educational expenses provided in Sections 529(c) and 530(d),

988 Internal Revenue Code; and

989 (ii) is:

990 (A) subtracted by the resident or nonresident estate or trust:

991 (I) that is the account owner; and

992 (II) on the resident or nonresident estate's or trust's return filed under this chapter for a
993 taxable year beginning on or before December 31, 2007; or

994 (B) used as the basis for the resident or nonresident estate or trust that is the account
995 owner to claim a tax credit under Section 59-10-1017; and

996 (e) any fiduciary adjustments required by Section 59-10-210.

997 (2) There shall be subtracted from unadjusted income of a resident or nonresident
998 estate or trust:

999 (a) the interest or a dividend on obligations or securities of the United States and its
1000 possessions or of any authority, commission, or instrumentality of the United States, to the
1001 extent that interest or dividend is included in gross income for federal income tax purposes for
1002 the taxable year but exempt from state income taxes under the laws of the United States, but
1003 the amount subtracted under this Subsection (2) shall be reduced by any interest on
1004 indebtedness incurred or continued to purchase or carry the obligations or securities described
1005 in this Subsection (2), and by any expenses incurred in the production of interest or dividend
1006 income described in this Subsection (2) to the extent that such expenses, including amortizable
1007 bond premiums, are deductible in determining federal taxable income;

1008 (b) income of an irrevocable resident trust if:

1009 (i) the income would not be treated as state taxable income derived from Utah sources
1010 under Section 59-10-204 if received by a nonresident trust;

1011 (ii) the trust first became a resident trust on or after January 1, 2004;

1012 (iii) no assets of the trust were held, at any time after January 1, 2003, in another
1013 resident irrevocable trust created by the same settlor or the spouse of the same settlor;

1014 (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);

1015 (v) the amount subtracted under this Subsection (2)(b) is reduced to the extent the
1016 settlor or any other person is treated as an owner of any portion of the trust under Subtitle A,

1017 Subchapter J, Subpart E of the Internal Revenue Code; and

1018 (vi) the amount subtracted under this Subsection (2)(b) is reduced by any interest on
1019 indebtedness incurred or continued to purchase or carry the assets generating the income
1020 described in this Subsection (2)(b), and by any expenses incurred in the production of income
1021 described in this Subsection (2)(b), to the extent that those expenses, including amortizable
1022 bond premiums, are deductible in determining federal taxable income;

1023 (c) if the conditions of Subsection (4)(a) are met, the amount of income of a resident or
1024 nonresident estate or trust derived from a deceased Ute tribal member:

1025 (i) during a time period that the Ute tribal member resided on homesteaded land
1026 diminished from the Uintah and Ouray Reservation; and

1027 (ii) from a source within the Uintah and Ouray Reservation;

1028 (d) any amount:

1029 (i) received by a resident or nonresident estate or trust;

1030 (ii) that constitutes a refund of taxes imposed by:

1031 (A) a state; or

1032 (B) the District of Columbia; and

1033 (iii) to the extent that amount is included in total income on that resident or nonresident
1034 estate's or trust's federal tax return for estates and trusts for that taxable year;

1035 (e) the amount of a railroad retirement benefit:

1036 (i) paid:

1037 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
1038 seq.;

1039 (B) to a resident or nonresident estate or trust derived from a deceased resident or
1040 nonresident individual; and

1041 (C) for the taxable year; and

1042 (ii) to the extent that railroad retirement benefit is included in total income on that
1043 resident or nonresident estate's or trust's federal tax return for estates and trusts;

1044 (f) an amount:

1045 (i) received by a resident or nonresident estate or trust if that amount is derived from a
1046 deceased enrolled member of an American Indian tribe; and

1047 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
1048 part on that amount in accordance with:

- 1049 (A) federal law;
- 1050 (B) a treaty; or
- 1051 (C) a final decision issued by a court of competent jurisdiction;
- 1052 (g) the amount that a qualified nongrantor charitable lead trust deducts under Section
- 1053 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the
- 1054 qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for
- 1055 the taxable year; and
- 1056 (h) any fiduciary adjustments required by Section 59-10-210.
- 1057 (3) Notwithstanding Subsection (1)(b), interest from bonds, notes, and other evidences
- 1058 of indebtedness issued by an entity described in Subsections (1)(b)(i) through (iv) may not be
- 1059 added to unadjusted income of a resident or nonresident estate or trust if, as annually
- 1060 determined by the commission:
- 1061 (a) for an entity described in Subsection (1)(b)(i) or (ii), the entity and all of the
- 1062 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
- 1063 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or
- 1064 (b) for an entity described in Subsection (1)(b)(iii) or (iv), the following do not impose
- 1065 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of
- 1066 this state:
- 1067 (i) the entity; or
- 1068 (ii) (A) the state in which the entity is located; or
- 1069 (B) the District of Columbia, if the entity is located within the District of Columbia.
- 1070 (4) (a) A subtraction for an amount described in Subsection (2)(c) is allowed only if:
- 1071 (i) the income is derived from a deceased Ute tribal member; and
- 1072 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
- 1073 requirements of this Subsection (4).
- 1074 (b) The agreement described in Subsection (4)(a):
- 1075 (i) may not:
- 1076 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
- 1077 (B) provide a subtraction under this section greater than or different from the
- 1078 subtraction described in Subsection (2)(c); or
- 1079 (C) affect the power of the state to establish rates of taxation; and

- 1080 (ii) shall:
- 1081 (A) provide for the implementation of the subtraction described in Subsection (2)(c);
- 1082 (B) be in writing;
- 1083 (C) be signed by:
- 1084 (I) the governor; and
- 1085 (II) the chair of the Business Committee of the Ute tribe;
- 1086 (D) be conditioned on obtaining any approval required by federal law; and
- 1087 (E) state the effective date of the agreement.
- 1088 (c) (i) The governor shall report to the commission by no later than February 1 of each
- 1089 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
- 1090 in effect.
- 1091 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
- 1092 subtraction permitted under Subsection (2)(c) is not allowed for taxable years beginning on or
- 1093 after the January 1 following the termination of the agreement.
- 1094 (d) For purposes of Subsection (2)(c) and in accordance with Title 63G, Chapter 3,
- 1095 Utah Administrative Rulemaking Act, the commission may make rules:
- 1096 (i) for determining whether income is derived from a source within the Uintah and
- 1097 Ouray Reservation; and
- 1098 (ii) that are substantially similar to how adjusted gross income derived from Utah
- 1099 sources is determined under Section 59-10-117.
- 1100 Section 21. Section **59-10-1017** is amended to read:
- 1101 **59-10-1017. Utah Educational Savings Plan tax credit.**
- 1102 (1) As used in this section:
- 1103 (a) "Account owner" is as defined in Section 53B-8a-102.
- 1104 (b) "Higher education costs" is as defined in Section 53B-8a-102.
- 1105 (c) "Maximum amount of a qualified investment for the taxable year" means, for a
- 1106 taxable year:
- 1107 (i) for a claimant, estate, or trust that is an account owner, if that claimant, estate, or
- 1108 trust is other than husband and wife account owners who file a single return jointly, the
- 1109 maximum amount of a qualified investment:
- 1110 (A) listed in Subsection 53B-8a-106(1)(e)(ii); and

1111 (B) increased or [~~decreased~~] kept for that taxable year in accordance with [~~Subsection~~
 1112 Subsections 53B-8a-106(1)(f) and (g)]; or

1113 (ii) for claimants who are husband and wife account owners who file a single return
 1114 jointly, the maximum amount of a qualified investment:

1115 (A) listed in Subsection 53B-8a-106(1)(e)(iii); and

1116 (B) increased or [~~decreased~~] kept for that taxable year in accordance with [~~Subsection~~
 1117 Subsections 53B-8a-106(1)(f) and (g)].

1118 (d) "Qualified investment" is as defined in Section 53B-8a-102.

1119 (2) Except as provided in Section 59-10-1002.2, a claimant, estate, or trust that is an
 1120 account owner may claim a nonrefundable tax credit equal to the product of:

1121 (a) the lesser of:

1122 (i) the amount of a qualified investment the claimant, estate, or trust:

1123 (A) makes during the taxable year; and

1124 (B) does not deduct:

1125 (I) for a claimant, on the claimant's federal individual income tax return; or

1126 (II) for an estate or trust, on the estate's or trust's federal income tax return for estates
 1127 and trusts; or

1128 (ii) the maximum amount of a qualified investment for the taxable year if the amount
 1129 described in Subsection (2)(a)(i) is greater than the maximum amount of a qualified investment
 1130 for the taxable year; and

1131 (b) 5%.

1132 (3) A tax credit under this section may not be carried forward or carried back.

1133 Section 22. Section **59-10-1313** is amended to read:

1134 **59-10-1313. Contribution to a Utah Educational Savings Plan account.**

1135 (1) (a) If a resident or nonresident individual is owed an individual income tax refund
 1136 for the taxable year, the individual may designate on the resident or nonresident individual's
 1137 income tax return a contribution to a Utah Educational Savings Plan account established under
 1138 Title 53B, Chapter 8a, [~~Higher Education Savings Incentive Program~~] Utah Educational
 1139 Savings Plan, in the amount of the entire individual income tax refund.

1140 (b) If a resident or nonresident individual is not owed an individual income tax refund
 1141 for the taxable year, the individual may not designate on the resident or nonresident's individual

1142 income tax return a contribution to a Utah Educational Savings Plan account.

1143 (2) The commission shall send the contribution to the Utah Educational Savings Plan
1144 [Trust] along with information requested by the Utah Educational Savings Plan [Trust],
1145 including the taxpayer's name, Social Security number, and address.

1146 (3) (a) If the taxpayer owns a Utah Educational Savings Plan account, the Utah
1147 Educational Savings Plan [Trust] shall deposit the contribution into the account.

1148 (b) If the taxpayer owns more than one Utah Educational Savings Plan account, the
1149 Utah Educational Savings Plan [Trust] shall allocate the contribution among the accounts in
1150 equal amounts.

1151 (c) (i) If the taxpayer does not own a Utah Educational Savings Plan account, the Utah
1152 Educational Savings Plan [Trust] shall send the taxpayer an account agreement.

1153 (ii) If the taxpayer does not sign and return the account agreement by the date specified
1154 by the Utah Educational Savings Plan [Trust], the Utah Educational Savings Plan [Trust] shall
1155 return the contribution to the taxpayer without any interest or earnings.

1156 (4) For the purpose of determining interest on an overpayment or refund under Section
1157 59-1-402, no interest accrues after the commission sends the contribution to the Utah
1158 Educational Savings Plan [Trust].

1159 Section 23. Section **63G-2-305** is amended to read:

1160 **63G-2-305. Protected records.**

1161 The following records are protected if properly classified by a governmental entity:

1162 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
1163 has provided the governmental entity with the information specified in Section 63G-2-309;

1164 (2) commercial information or nonindividual financial information obtained from a
1165 person if:

1166 (a) disclosure of the information could reasonably be expected to result in unfair
1167 competitive injury to the person submitting the information or would impair the ability of the
1168 governmental entity to obtain necessary information in the future;

1169 (b) the person submitting the information has a greater interest in prohibiting access
1170 than the public in obtaining access; and

1171 (c) the person submitting the information has provided the governmental entity with
1172 the information specified in Section 63G-2-309;

1173 (3) commercial or financial information acquired or prepared by a governmental entity
1174 to the extent that disclosure would lead to financial speculations in currencies, securities, or
1175 commodities that will interfere with a planned transaction by the governmental entity or cause
1176 substantial financial injury to the governmental entity or state economy;

1177 (4) records the disclosure of which could cause commercial injury to, or confer a
1178 competitive advantage upon a potential or actual competitor of, a commercial project entity as
1179 defined in Subsection 11-13-103(4);

1180 (5) test questions and answers to be used in future license, certification, registration,
1181 employment, or academic examinations;

1182 (6) records the disclosure of which would impair governmental procurement
1183 proceedings or give an unfair advantage to any person proposing to enter into a contract or
1184 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
1185 Subsection (6) does not restrict the right of a person to have access to, once the contract or
1186 grant has been awarded, a bid, proposal, or application submitted to or by a governmental
1187 entity in response to:

1188 (a) a request for bids;

1189 (b) a request for proposals;

1190 (c) a grant; or

1191 (d) other similar document;

1192 (7) records that would identify real property or the appraisal or estimated value of real
1193 or personal property, including intellectual property, under consideration for public acquisition
1194 before any rights to the property are acquired unless:

1195 (a) public interest in obtaining access to the information outweighs the governmental
1196 entity's need to acquire the property on the best terms possible;

1197 (b) the information has already been disclosed to persons not employed by or under a
1198 duty of confidentiality to the entity;

1199 (c) in the case of records that would identify property, potential sellers of the described
1200 property have already learned of the governmental entity's plans to acquire the property;

1201 (d) in the case of records that would identify the appraisal or estimated value of
1202 property, the potential sellers have already learned of the governmental entity's estimated value
1203 of the property; or

1204 (e) the property under consideration for public acquisition is a single family residence
1205 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
1206 the property as required under Section 78B-6-505;

1207 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
1208 compensated transaction of real or personal property including intellectual property, which, if
1209 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
1210 of the subject property, unless:

1211 (a) the public interest in access outweighs the interests in restricting access, including
1212 the governmental entity's interest in maximizing the financial benefit of the transaction; or

1213 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
1214 the value of the subject property have already been disclosed to persons not employed by or
1215 under a duty of confidentiality to the entity;

1216 (9) records created or maintained for civil, criminal, or administrative enforcement
1217 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
1218 release of the records:

1219 (a) reasonably could be expected to interfere with investigations undertaken for
1220 enforcement, discipline, licensing, certification, or registration purposes;

1221 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
1222 proceedings;

1223 (c) would create a danger of depriving a person of a right to a fair trial or impartial
1224 hearing;

1225 (d) reasonably could be expected to disclose the identity of a source who is not
1226 generally known outside of government and, in the case of a record compiled in the course of
1227 an investigation, disclose information furnished by a source not generally known outside of
1228 government if disclosure would compromise the source; or

1229 (e) reasonably could be expected to disclose investigative or audit techniques,
1230 procedures, policies, or orders not generally known outside of government if disclosure would
1231 interfere with enforcement or audit efforts;

1232 (10) records the disclosure of which would jeopardize the life or safety of an
1233 individual;

1234 (11) records the disclosure of which would jeopardize the security of governmental

1235 property, governmental programs, or governmental recordkeeping systems from damage, theft,
1236 or other appropriation or use contrary to law or public policy;

1237 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
1238 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
1239 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

1240 (13) records that, if disclosed, would reveal recommendations made to the Board of
1241 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
1242 Board of Pardons and Parole, or the Department of Human Services that are based on the
1243 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
1244 jurisdiction;

1245 (14) records and audit workpapers that identify audit, collection, and operational
1246 procedures and methods used by the State Tax Commission, if disclosure would interfere with
1247 audits or collections;

1248 (15) records of a governmental audit agency relating to an ongoing or planned audit
1249 until the final audit is released;

1250 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
1251 litigation that are not available under the rules of discovery;

1252 (17) records disclosing an attorney's work product, including the mental impressions or
1253 legal theories of an attorney or other representative of a governmental entity concerning
1254 litigation;

1255 (18) records of communications between a governmental entity and an attorney
1256 representing, retained, or employed by the governmental entity if the communications would be
1257 privileged as provided in Section 78B-1-137;

1258 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
1259 from a member of the Legislature; and

1260 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
1261 legislative action or policy may not be classified as protected under this section; and

1262 (b) (i) an internal communication that is part of the deliberative process in connection
1263 with the preparation of legislation between:

1264 (A) members of a legislative body;

1265 (B) a member of a legislative body and a member of the legislative body's staff; or

1266 (C) members of a legislative body's staff; and
1267 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
1268 legislative action or policy may not be classified as protected under this section;
1269 (20) (a) records in the custody or control of the Office of Legislative Research and
1270 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
1271 legislation or contemplated course of action before the legislator has elected to support the
1272 legislation or course of action, or made the legislation or course of action public; and
1273 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
1274 Office of Legislative Research and General Counsel is a public document unless a legislator
1275 asks that the records requesting the legislation be maintained as protected records until such
1276 time as the legislator elects to make the legislation or course of action public;
1277 (21) research requests from legislators to the Office of Legislative Research and
1278 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
1279 in response to these requests;
1280 (22) drafts, unless otherwise classified as public;
1281 (23) records concerning a governmental entity's strategy about collective bargaining or
1282 pending litigation;
1283 (24) records of investigations of loss occurrences and analyses of loss occurrences that
1284 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
1285 Uninsured Employers' Fund, or similar divisions in other governmental entities;
1286 (25) records, other than personnel evaluations, that contain a personal recommendation
1287 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
1288 personal privacy, or disclosure is not in the public interest;
1289 (26) records that reveal the location of historic, prehistoric, paleontological, or
1290 biological resources that if known would jeopardize the security of those resources or of
1291 valuable historic, scientific, educational, or cultural information;
1292 (27) records of independent state agencies if the disclosure of the records would
1293 conflict with the fiduciary obligations of the agency;
1294 (28) records of an institution within the state system of higher education defined in
1295 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
1296 retention decisions, and promotions, which could be properly discussed in a meeting closed in

1297 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
1298 the final decisions about tenure, appointments, retention, promotions, or those students
1299 admitted, may not be classified as protected under this section;

1300 (29) records of the governor's office, including budget recommendations, legislative
1301 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
1302 policies or contemplated courses of action before the governor has implemented or rejected
1303 those policies or courses of action or made them public;

1304 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
1305 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
1306 recommendations in these areas;

1307 (31) records provided by the United States or by a government entity outside the state
1308 that are given to the governmental entity with a requirement that they be managed as protected
1309 records if the providing entity certifies that the record would not be subject to public disclosure
1310 if retained by it;

1311 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
1312 except as provided in Section 52-4-206;

1313 (33) records that would reveal the contents of settlement negotiations but not including
1314 final settlements or empirical data to the extent that they are not otherwise exempt from
1315 disclosure;

1316 (34) memoranda prepared by staff and used in the decision-making process by an
1317 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
1318 other body charged by law with performing a quasi-judicial function;

1319 (35) records that would reveal negotiations regarding assistance or incentives offered
1320 by or requested from a governmental entity for the purpose of encouraging a person to expand
1321 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
1322 person or place the governmental entity at a competitive disadvantage, but this section may not
1323 be used to restrict access to a record evidencing a final contract;

1324 (36) materials to which access must be limited for purposes of securing or maintaining
1325 the governmental entity's proprietary protection of intellectual property rights including patents,
1326 copyrights, and trade secrets;

1327 (37) the name of a donor or a prospective donor to a governmental entity, including an

1328 institution within the state system of higher education defined in Section 53B-1-102, and other
1329 information concerning the donation that could reasonably be expected to reveal the identity of
1330 the donor, provided that:

1331 (a) the donor requests anonymity in writing;

1332 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
1333 classified protected by the governmental entity under this Subsection (37); and

1334 (c) except for an institution within the state system of higher education defined in
1335 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
1336 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
1337 over the donor, a member of the donor's immediate family, or any entity owned or controlled
1338 by the donor or the donor's immediate family;

1339 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
1340 73-18-13;

1341 (39) a notification of workers' compensation insurance coverage described in Section
1342 34A-2-205;

1343 (40) (a) the following records of an institution within the state system of higher
1344 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
1345 or received by or on behalf of faculty, staff, employees, or students of the institution:

1346 (i) unpublished lecture notes;

1347 (ii) unpublished notes, data, and information:

1348 (A) relating to research; and

1349 (B) of:

1350 (I) the institution within the state system of higher education defined in Section
1351 53B-1-102; or

1352 (II) a sponsor of sponsored research;

1353 (iii) unpublished manuscripts;

1354 (iv) creative works in process;

1355 (v) scholarly correspondence; and

1356 (vi) confidential information contained in research proposals;

1357 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
1358 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

- 1359 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 1360 (41) (a) records in the custody or control of the Office of Legislative Auditor General
1361 that would reveal the name of a particular legislator who requests a legislative audit prior to the
1362 date that audit is completed and made public; and
- 1363 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
1364 Office of the Legislative Auditor General is a public document unless the legislator asks that
1365 the records in the custody or control of the Office of Legislative Auditor General that would
1366 reveal the name of a particular legislator who requests a legislative audit be maintained as
1367 protected records until the audit is completed and made public;
- 1368 (42) records that provide detail as to the location of an explosive, including a map or
1369 other document that indicates the location of:
- 1370 (a) a production facility; or
1371 (b) a magazine;
- 1372 (43) information:
- 1373 (a) contained in the statewide database of the Division of Aging and Adult Services
1374 created by Section 62A-3-311.1; or
1375 (b) received or maintained in relation to the Identity Theft Reporting Information
1376 System (IRIS) established under Section 67-5-22;
- 1377 (44) information contained in the Management Information System and Licensing
1378 Information System described in Title 62A, Chapter 4a, Child and Family Services;
- 1379 (45) information regarding National Guard operations or activities in support of the
1380 National Guard's federal mission;
- 1381 (46) records provided by any pawn or secondhand business to a law enforcement
1382 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
1383 Secondhand Merchandise Transaction Information Act;
- 1384 (47) information regarding food security, risk, and vulnerability assessments performed
1385 by the Department of Agriculture and Food;
- 1386 (48) except to the extent that the record is exempt from this chapter pursuant to Section
1387 63G-2-106, records related to an emergency plan or program prepared or maintained by the
1388 Division of Homeland Security the disclosure of which would jeopardize:
- 1389 (a) the safety of the general public; or

- 1390 (b) the security of:
- 1391 (i) governmental property;
- 1392 (ii) governmental programs; or
- 1393 (iii) the property of a private person who provides the Division of Homeland Security
- 1394 information;
- 1395 (49) records of the Department of Agriculture and Food relating to the National
- 1396 Animal Identification System or any other program that provides for the identification, tracing,
- 1397 or control of livestock diseases, including any program established under Title 4, Chapter 24,
- 1398 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
- 1399 Quarantine;
- 1400 (50) as provided in Section 26-39-501:
- 1401 (a) information or records held by the Department of Health related to a complaint
- 1402 regarding a child care program or residential child care which the department is unable to
- 1403 substantiate; and
- 1404 (b) information or records related to a complaint received by the Department of Health
- 1405 from an anonymous complainant regarding a child care program or residential child care;
- 1406 (51) unless otherwise classified as public under Section 63G-2-301 and except as
- 1407 provided under Section 41-1a-116, an individual's home address, home telephone number, or
- 1408 personal mobile phone number, if:
- 1409 (a) the individual is required to provide the information in order to comply with a law,
- 1410 ordinance, rule, or order of a government entity; and
- 1411 (b) the subject of the record has a reasonable expectation that this information will be
- 1412 kept confidential due to:
- 1413 (i) the nature of the law, ordinance, rule, or order; and
- 1414 (ii) the individual complying with the law, ordinance, rule, or order;
- 1415 (52) the name, home address, work addresses, and telephone numbers of an individual
- 1416 that is engaged in, or that provides goods or services for, medical or scientific research that is:
- 1417 (a) conducted within the state system of higher education, as defined in Section
- 1418 53B-1-102; and
- 1419 (b) conducted using animals;
- 1420 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement

1421 Private Proposal Program, to the extent not made public by rules made under that chapter;
1422 (54) information collected and a report prepared by the Judicial Performance
1423 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
1424 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
1425 the information or report;

1426 (55) (a) records of the Utah Educational Savings Plan [~~Trust~~] created under Section
1427 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

1428 (b) proposals submitted to the Utah Educational Savings Plan [~~Trust~~]; and

1429 (c) contracts entered into by the Utah Educational Savings Plan [~~Trust~~] and the related
1430 payments;

1431 (56) records contained in the Management Information System created in Section
1432 62A-4a-1003;

1433 (57) records provided or received by the Public Lands Policy Coordinating Office in
1434 furtherance of any contract or other agreement made in accordance with Section 63J-4-603; and

1435 (58) information requested by and provided to the Utah State 911 Committee under
1436 Section 53-10-602.

1437 Section 24. **Effective date.**

1438 If approved by two-thirds of all the members elected to each house, this bill takes effect
1439 upon approval by the governor, or the day following the constitutional time limit of Utah
1440 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
1441 the date of veto override.