FEASIBILITY REPORT

UTAH TRANSIT AUTHORITY
TRANSITION TO A STATE ENTITY

November 2020

prepared for

The Utah Transit Authority Board of Trustees
and the
Utah Department of Transportation

by

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Acknowledgments

The Project Steering Committee for the development of this document comprised staff members representing both the Utah Transit Authority and the Utah Department of Transportation. Steering Committee Members included:

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Executive Summary

Project Overview

Utah State Code 17B-2a-808.1(2) directs the Utah Transit Authority (UTA) Board of Trustees and the Utah Department of Transportation (UDOT) to jointly study and evaluate the feasibility of transitioning UTA to a state entity status. Specifically:

> *"[the] board of trustees of each large public transit agency … in partnership with the Department of Transportation, study and evaluate the feasibility of a strategic transition of a large public transit district into a state entity …"*

UDOT, in partnership with UTA, contracted with an independent consulting firm, Baker Tilly US LLP, to complete the required assessment. This document constitutes the final report on the results of the consulting team's work.

Study Scope and Approach

The scope of the transition study focused on the identification of the issues that would need to be addressed in any future transition of UTA to state entity status, including the following topics:

- Financial matters
- Human resources matters including collective bargaining, compensation, and benefits
- Regulatory framework
- Governance.

The overall project approach included the primary tasks listed below.

- Collection and review of background documents and data
- Completion of discovery interviews with a cross-section of both internal and external stakeholders involved in the potential organizational transition
- Identification of key transition-related issues
- Presentation of a progress report to the Interim Transportation Committee
- Preparation, review and presentation of this final report.

Project consultants completed 40 interviews involving approximately 50 individual participants, representing:

- Current and former state elected officials
- UTA Trustees
- UDOT staff
- Other state agency staff
- UTA management staff
- UTA advisors and consultants

- Amalgamated Transit Union
- Regional Councils.

Additionally, with the support of the Mountainland Association of Governments (MAG) and the Wasatch Front Regional Council (WFRC), project consultants conducted an online survey of local government officials within the UTA service area and a focus group with the Mountainland Regional Planning Committee to elicit feedback on their perspectives on a potential UTA transition.

Background research efforts involved the collection and examination of a wide variety of financial, human resource, regulatory, and historical legislative documents, including the following recent events:

- **2017 Transportation Governance and Funding Task Force Report**, which included a working group focused on identifying options for a state role in public transit services' funding and governance. As illustrated on the following page, three alternative governance models for coordinated transit and transportation service delivery were developed and evaluated. (See Appendix A.)
- **2018 Transportation Governance Amendments (S.B. 136)**, including multiple provisions to modify UTA governance including a restructuring of the Board of Trustees, appointment of the Board of Trustees by the Governor, assigning responsibility for UTA legal representation to the Office of the Attorney General, contracting reforms, and the creation of a Local Advisory Board (now Advisory Council) to provide local input to the Trustees. The direction to explore the feasibility of UTA's strategic transition to a state entity was also included in this legislation.

Transition Issues and Considerations

The consulting team’s interviews and research establish that multiple alternative organizational structures for UTA may exist. The options range from preserving the existing structure under the reformed governance model to creating a fully integrated transportation model within another state agency. Within that range, creating an independent state agency or a cabinet-level agency within the executive branch is also possible. Other options, such as those explored by the 2017 Transportation Governance and Funding Task Force, introduced the possibility of transitioning only parts of UTA to the state. Each of the alternative organizational models considered involve varying levels of risk, complexity and time to implement.

Considering the broad range of possible approaches in designing a new transit-service delivery model and the uncertainties involved in each approach, it is beyond the scope of this report to identify all risks, challenges, and costs associated with a future transition. Accordingly, the discussion of the transition issues and considerations described in this report should not be construed as an exhaustive listing of every issue that might be encountered. If the legislature directs UTA to transition to a state entity status, additional due diligence and detailed integration planning would be prudent.

2017 Transportation Governance and Funding Task Force:
Comparison of Governance Models Considered

Characteristics & Considerations	**Model A** *Fully Multimodal UDOT*	**Model B** *Multimodal UDOT*	**Model C** *Multimodal UDOT (alternative)*
Ownership of existing transit infrastructure	THE GREAT SEAL OF THE STATE OF UTAH 1896	THE GREAT SEAL OF THE STATE OF UTAH 1896	UTA
Ownership of new, state-funded transit infrastructure	THE GREAT SEAL OF THE STATE OF UTAH 1896	THE GREAT SEAL OF THE STATE OF UTAH 1896	THE GREAT SEAL OF THE STATE OF UTAH 1896
Operation and maintenance of the current transit system	THE GREAT SEAL OF THE STATE OF UTAH 1896	UTA	UTA
Operation and maintenance of new, state-funded transit system	THE GREAT SEAL OF THE STATE OF UTAH 1896	UTA	UTA
State of Good Repair on existing infrastructure	THE GREAT SEAL OF THE STATE OF UTAH 1896	THE GREAT SEAL OF THE STATE OF UTAH 1896	UTA
Delivery of new, state-funded transit capital projects	THE GREAT SEAL OF THE STATE OF UTAH 1896	THE GREAT SEAL OF THE STATE OF UTAH 1896 UTA *	THE GREAT SEAL OF THE STATE OF UTAH 1896 UTA *
Current local-option sales taxes	THE GREAT SEAL OF THE STATE OF UTAH 1896	THE GREAT SEAL OF THE STATE OF UTAH 1896 UTA	UTA
Possible new, state-imposed ¼ cent sales tax in eight counties or other state-authorized funding	THE GREAT SEAL OF THE STATE OF UTAH 1896	THE GREAT SEAL OF THE STATE OF UTAH 1896	THE GREAT SEAL OF THE STATE OF UTAH 1896
FTA Funding for state-funded projects	THE GREAT SEAL OF THE STATE OF UTAH 1896	THE GREAT SEAL OF THE STATE OF UTAH 1896	THE GREAT SEAL OF THE STATE OF UTAH 1896 UTA

*State has decision authority

Source: Transportation Governance and Funding Task Force Report, Presentation to the Transportation Interim Committee, 11/15/2017, Utah State Office of Legislative Research and General Counsel

A high-level summary of the transition issues identified by the consulting team follows below.

Financial Issues

1. **UTA Debt Obligations –** State policymakers have consistently expressed concerns regarding the potential impact on the state's financial condition should a transition of UTA to a state entity result in an assumption of over $2 billion in UTA debt by the State of Utah. UTA's financial advisors have examined this issue and have estimated the costs to the state of retiring or refinancing that debt would total over $300 million. Further, UTA's advisors have not found an easy way for the state to assume UTA ownership while preserving the local sales tax revenue model without the risk of a legal challenge by bondholders.

2. **State Credit Rating –** UTA's debt is secured solely by the pledge of local sales tax revenue. No court has ruled whether a transition of UTA to state entity status would risk adding to the state's constitutional debt limit. According to the State Treasurer and the state's fiduciary municipal advisor, UTA's debt obligations would be included in rating agency calculations of net tax-supported debt. They could, therefore, adversely impact the state's credit profile and perhaps even its AAA bond rating. A downgrade of the state's credit rating would increase the cost of future borrowings.

3. **Interlocal Sales Tax Agreements –** These contractual arrangements with the local jurisdictions served by UTA provide the mechanism through which UTA receives local option sales tax revenues to support the projects covered by the agreements. These revenues are irrevocably pledged to the service of the outstanding bonded debt, and revenues over that amount are used to underwrite operational costs. Of the 13 existing interlocal agreements, ten have no provision for successors and assigns. Therefore, a need to amend or replace existing ILAs could arise in a future transition scenario to provide the necessary financial support to the successor entity. The state could create a new, replacement tax mechanism to raise the needed funding in the alternative.

4. **Funding of New Debt –** The current UTA capital improvement program anticipates the need for $71 million in new debt through fiscal year 2024, and it is reasonable to expect that UTA or its successor entity will need to finance additional new capital project investments via the sale of bonds beyond that time horizon. If UTA becomes an entity of State government, those future debt obligations could become an obligation of the State of Utah absent updated agreements with the local jurisdictions to renew their sales tax commitment.

5. **Sales and Use Tax Limitations –** State law defines the allowable uses of sales and use taxes and, in some instances, the code prohibits the expenditure of those funds for transit operating and maintenance costs. If UTA were to transition to a state entity, and if new funding arrangements were required beyond those currently in place, it will be important to examine and rectify any limitations that might impede such funds' availability to support transit service delivery.

6. **Other Contractual Agreements –** In addition to the previously addressed interlocal sales tax agreements, UTA is a party to thousands of other contractual relationships. Each agreement would need legal review and a determination as to the necessary course of action in the event of a change to UTA's entity status. Such review costs could be significant, depending on the resolution method, either in time for in-house staff or dollars if assigned to outside counsel.

7. **Spending Authority –** Depending on the organizational model chosen for any potential UTA transition, adaptations of the current fiscal planning, budgeting, expenditure controls, oversight and other fiscal management practices and procedures may require revision to conform to state law, standards and processes. Also, because the State of Utah and UTA operate on different fiscal calendars, a fiscal year transition plan could become necessary.

8. **Service Equity Model –** UTA strives to maintain a close balance between the revenues contributed and the value of transit services received by each taxing jurisdiction in its service area. The UTA service equity model analyzes five-year trends in revenues and costs and is used by management to make service adjustments needed to maintain equitable balance. Depending on any future funding model's structure, continued attention to the balance between taxes levied and services received could become important.

9. **Revenue Volatility –** Significant ridership and farebox revenue declines experienced due to the COVID-19 pandemic illustrate the sensitivity of transit revenue streams and service demand to factors beyond the organization's ability to control. In this instance, the availability of significant federal relief funds helped UTA dampen the revenue shortfall's impact. If the transit agency were to become a part of Utah State Government, future policymakers could face the need to address similar crises with state funds.

Human Resources Issues

1. **Collective Bargaining Agreement –** Approximately two-thirds of the UTA workforce is unionized and represented by the Amalgamated Transit Union. The balance of the UTA workforce has the right under state law to organize for collective bargaining purposes. Conversely, state government workers have no union representation. Additionally, all mass transit workers have special protections under Section 13(c) of the Federal Transit Act. If UTA were to become a state entity, legislative action could be necessary to recognize the union and ensure bargaining rights and employee wages, benefits, and working conditions. Decision-makers might also consider that the introduction of a unionized workforce into the existing non-union workforce could expose the state to employee grievances and lawsuits regarding a range of employment-related matters.

2. **Pension Plan –** With the passage of Senate Bill 136, the legislature directed the completion of a study of the feasibility of UTA becoming a part of the Utah Retirement System. The analysis showed that the UTA and URS retirement benefits were roughly comparable to one another, depending on the transition

approach selected, but that there is a strong likelihood that the Amalgamated Transit Workers will litigate any pension benefit changes and that UTA could be subject to a Section 13(c) labor rights challenge that could risk or delay future federal grant awards.

3. **Employee Compensation & Benefits –** A transition of UTA into the executive branch of state government could trigger the need to merge the existing, separate compensation and benefit plans. Were a transition to occur to an independent state agency status, this need could be mitigated. The process of integrating and rationalizing the separate plans while maintaining both internal equity and market competitiveness could become a significant and challenging undertaking. Real or perceived losses of compensation or benefits, among both UTA and state personnel, could become the subject of grievances and litigation or could serve as a catalyst of attrition among those with specialized skill sets and the greatest market demand.

4. **Talent Retention –** UTA's workforce of over 2,700 personnel includes several specialized, transit-specific jobs at all organization levels. In 2019, UTA calculated that the cost of turnover in the operator ranks totaled $2.1 million. Some published reports, citing data compiled by the Society for Human Resources Management, say that direct employee replacement costs can reach as high as 50% - 60% of an employee's annual salary. The design and implementation of specific initiatives for the engagement and retention of mission-critical workers are considered a best practice in large scale organizational change initiatives. They could be a valuable transition tool to ensure the continuity of UTA operations and federal grant funding.

Regulatory Issues

1. **Continued Grant Eligibility –** In fiscal year 2019, UTA received $116 million in Federal Transit Administration funding to support both operations and capital expenses. To ensure the continuation of such support, any successor entity to UTA must demonstrate that it has "sufficient legal, financial, technical, and management capacity, and functional capacity" to meet the terms of the FTAs master grant agreement. The project team assesses the risk of losing grant eligibility as low, assuming that UTA's existing public transit and compliance expertise is retained in any future transition.

2. **State Safety Oversight –** Federal regulations require that each state with FTA grant-eligible rail fixed guideway transit systems establish an independent State Safety Oversight (SSO) office to provide safety and security oversight of those systems. To establish independence from UTA, the State of Utah established the State Safety Oversight function within UDOT. Any future organizational model for UTA that does not impair the State Safety Oversight office's legal and financial independence will most likely be acceptable to FTA. If UTA's light rail operations were consolidated within UDOT, the SSO's legal and financial independence could be called into question.

3. **Asset Transfers and Continuing Control –** Public transit operators must provide legal assurances to the FTA that assets acquired with federal assistance will remain available for their intended purpose over their useful life or until disposition. Transfers or dispositions of any such assets in a future transition scenario must comply with the federal regulations' asset transfer provisions. Assets owned, controlled or managed by UTA without federal funding may also be encumbered by contractual provisions that will need to be addressed in the event of a transition of ownership.

4. **Service Changes and Fares (Title VI) –** Providers of fixed-route transit services such as UTA must comply with federal rules mandating the analysis of service and fare changes to determine whether low-income and other protected populations could bear a disproportionate share of the impact of such changes. Any successor entity's governing body to UTA would be responsible for ensuring that these requirements are scrupulously observed. The consulting team assesses the risk of non-compliance as low, assuming that UTA's existing public transit and compliance expertise is retained in any future transition.

5. **Other Compliance Obligations –** The governing body and management of any successor to UTA will be accountable for ensuring compliance with many regulatory standards and requirements applicable to FTA recipients and other federal support funding. FTA requires formal compliance reviews every three years to assess compliance levels and direct corrective actions for any deficiencies observed in 21 specific performance areas. Repeated findings of deficiency could negatively impact grant award eligibility. No significant compliance impacts attributable to the potential UTA transition are anticipated, assuming that knowledgeable UTA program experts are retained in any successor entity.

Governance and Organizational Issues

1. **Future Organizational Model –** Multiple potential organizational models for public transit service delivery, and the state's involvement therein, have been explored in recent years. The work of the 2017 Transportation and Governance Funding Task Force offered three alternatives, though none were adopted. If the legislature determines that a transition of UTA to the state is in the public interest, a clearly articulated set of transition policy objectives, desired outcomes, accountabilities, and success metrics would inform decisions regarding the new entity's future organizational placement and design.

2. **Local Government Participation –** Because the funding of UTA's capital and operating costs relies on sales taxes levied by the participating local governments, those entities have been actively engaged in public transit-related decision making. Any future loss of substantive input into a successor entity's service planning and funding decisions could raise political tensions if local officials perceive that their ability to influence the use of local tax dollars is diminished.

3. **Branding –** Depending on the future organizational model for transit delivery, a rebranding of the new entity may be needed. The costs of such rebranding could prove to be substantial.

4. **Shared Support Services –** If UTA were to transition into the executive branch of state government, there could be an opportunity to consolidate the legacy "back office" administrative support functions and technologies – such as finance and accounting, purchasing, human resources and payroll, risk management, fleet management, information technology, facilities management, and others – to the state's shared services model. Such consolidation could reduce the overall administrative cost burden on the successor entity but involve significant upfront transition costs and personnel impacts.

5. **Operational Technology Migration –** UTA has developed and deployed various specialized technical systems necessary for the safe, efficient and effective operation of public transit services. Among others, these include applications for route planning and scheduling, operator timekeeping, fare collection, ticket vending, emergency operations communications, electronic signage, security cameras, remote telemetry, and others. These systems could be used in any state entity model without significant disruption, although the development of interfaces or integrations to the state's core enterprise systems would become necessary. The scope and scale of such integration requirements merit close analysis.

6. **Integration Program Management –** UTA's transition into the state government structure, if pursued, would share many characteristics of a large-scale business merger, necessitating detailed analysis, careful planning, and a structured approach to the integration of technologies, processes, and people. Depending on the transition program's scope, a multi-year integration effort may be required, involving state employees from all involved agencies and, potentially, expert consulting support.

Project Background

The Utah Department of Transportation (UDOT), in partnership with the Utah Transit Authority (UTA), contracted with an independent consultant, Baker Tilly US LLP, to complete an assessment of the feasibility of transitioning UTA from its current status as a local transit district to a state agency.

Legislative Direction

Utah State Code directs the UTA Board of Trustees and UDOT to jointly study and evaluate the feasibility of transitioning UTA to a state entity status. Specifically, Utah Code 17B-2a-808.1(2) requires that:

> *"the board of trustees of each large public transit agency … in partnership with the Department of Transportation, study and evaluate the feasibility of a strategic transition of a large public transit district into a state entity …"*

This statutory requirement was adopted as part of Senate Bill 136, Transportation Governance Amendments, in the 2018 General Session, and modified by Senate Bill 72, Transportation Governance and Funding Revisions adopted in the 2019 General Session.

UTA is currently the only Utah public transit provider that matches the statutory definition of a "large transit district." A Project Steering Committee comprising UDOT and UTA staff representatives has provided staffing support to the study. The UTA Board of Trustees is statutorily responsible for compliance with the legislation in partnership with UDOT.

To ensure transparency and objective third-party analysis, the two agencies agreed that UDOT would serve as the procuring entity and overall project manager. Accordingly, UDOT issued a request for proposals in the summer of 2019, seeking independent consulting support to complete the state entity transition feasibility study. This document presents the consulting team's findings regarding the significant issues that could require consideration if UTA were to transition to state entity status.

Historical Context

Previous audits and initiatives have considered or implemented reforms to UTA's governance. A summary of those efforts may be found in Appendix A.

Study Scope & Approach

The scope of the transition feasibility study focused on the identification of the issues that would need to be addressed in any future transition of UTA to the state, including the following topics:

- Financial matters
- Human resources matters including collective bargaining, compensation, and benefits
- Regulatory framework
- Governance.

Approach overview

The overall approach to the transition feasibility study included the primary tasks listed below.

- Collection and review of background documents and data
- Completion of discovery interviews with a cross-section of both internal and external stakeholders involved in the potential organizational transition
- Identification of key transition-related issues
- Progress report to the Interim Transportation Committee
- Preparation, review and presentation of a final report.

Stakeholder engagement

Members of the consultant team completed a series of interviews with key stakeholders listed below:

- State Elected Officials
  - Senator Wayne Harper
  - Senator Kirk Cullimore
  - Senator Curtis Bramble
  - Senator Karen Mayne
  - Former Senator Wayne Niederhauser
  - Representative Kay Christofferson
  - John Dougall, State Auditor
  - David Damschen, State Treasurer.
- State Agency Staff
  - Kristen Cox, Executive Director of Management and Budget
  - Tani Downing, Executive Director of Administrative Services
  - John Reidhead, Finance Division Director
  - Paul Garver, Department of Human Resources Director

- Brian Nelson, Director of Risk Management
- Kurt Slaugh, Chief Deputy State Treasurer
- Christopher Hughes, Director of Purchasing and General Services
- Stewart Cowley, Fleet Division Director
  - Dan Black, Fleet Manager
  - Robert Slade, Assistant Division Director/Fuel Manager
- Emily Barton, Debt Manager, Office of the State Treasurer
- Hollie Andrus, Financial Audit Director, Office of the State Auditor.

– UDOT Staff
  - Carlos Braceras, Executive Director
  - Linda Hull, Policy and Legislative Services Director
  - Carlos Rodriguez, Human Resources Field Director
  - Jim Golden, State Safety Oversight Program Manager.

– UTA Trustees
  - Carlton Christensen, UTA Trustee and Board Chair
  - Beth Holbrook, UTA Trustee
  - Kent Millington, UTA Trustee.

– Utah Attorney General
  - David Wilkins, Legal Counsel, Section Director.

– UTA Staff
  - Carolyn Gonot, Executive Director
  - Eddy Cumins, Chief Operating Officer
  - Bob Biles, Chief Financial Officer
  - Todd Mills, Purchasing Director
  - Dan Harmuth, Information Technology Director
  - Kim Ulibarri, Chief People Officer
  - Sheldon Shaw, Manager, Safety & Security.

– UTA Advisors
  - Jeff Acerson, UTA Advisory Council Chairman
  - Brian Baker, Zions Bank, UTA Financial Advisor
  - Blake Wade, Gilmore Bell, UTA Bond Counsel.

– Amalgamated Transit Union
  - Rodney Dunn, President.

– Regional Council Executives
  - Andrew Jackson, Executive Director, Mountainland Association of Governments
  - Andrew Gruber, Executive Director, Wasatch Front Regional Council.

- Federal Transportation Officials
  - Cindy Terwilliger, FTA Region 8 Administrator - conference call including following staff:
    - David Beckhouse, Deputy Regional Administrator
    - John Lynch, Regional Counsel
    - Tracy MacDonald, Planning and Program Development Director
    - Melanie Choquette, Transportation Program Specialist
    - Richard Wong, Attorney/Advisor
    - Kevin Osborne, Community Planner
    - Patrick Nemons, Safety Oversight
  - Kevin Fitzgerald, FRA Region 7 Deputy Regional Administrator.
- Local Elected Official Survey and Focus Group
  - The Wasatch Front Regional Council (WFRC) and the Mountainland Association of Governments (MAG) sponsored an online survey of local government officials.
  - MAG hosted a focus group of the Mountainland MPO Regional Planning Committee, facilitated by project consultants.

Transition Issues & Considerations

The consulting team's interviews and research establish that multiple alternative organizational structures for UTA may exist. The options range from preserving the existing structure under the reformed governance model to creating a fully integrated transportation service delivery model within another state agency. Within that range, creating an independent state agency or a cabinet-level agency within the executive branch is also possible. Other options, such as those explored by the 2017 Transportation Governance and Funding Task Force, introduced the possibility of transitioning only parts of UTA to the state. Each of the alternative organizational models explored in the past involve varying levels of risk, complexity and time to implement.

On the pages that follow, the potential transition issues identified by the consulting team are presented and described within the following categories:

- ***Financial issues*** including such matters as the UTA debt, state credit rating, budgeting, local sales taxes, and related topics
- ***Human Resources issues*** including collective bargaining, compensation and benefits, pension plan, recruitment and retention, and similar concerns
- ***Regulatory issues*** including a variety of compliance matters such as safety oversight, asset management, and federal grant eligibility
- ***Governance and Organizational issues*** such as future operating models, local government involvement, process and technology integration and transition program management.

A narrative definition of each potential issue and any anticipated challenges, risks, and cost considerations are provided within these four categories.

The following pages highlight the issues the project team assessed as most significant to UTA's potential transition from its current status into a state entity. The analysis is presented at a global level, concentrating on those issues that will benefit from policymakers' attention under any state-entity structure that may be proposed.

Considering the broad range of possible approaches in designing a new transit-service delivery model and the uncertainties involved in each approach, it is beyond this report's scope to identify all risks, challenges, and costs associated with a future transition. Accordingly, the discussion of issues and considerations that follows should not be construed as an exhaustive listing of every issue that might be encountered if and when the legislature directs UTA to transition to a state entity status. In that instance, additional due diligence and detailed integration planning would be prudent.

Financial Issues

Issue 1: UTA Debt Obligations

State policymakers have consistently expressed concerns regarding the potential impact on the state's financial condition should a transition of UTA to a state entity result in an assumption of over $2 billion in UTA debt by the State of Utah. UTA's financial advisors have examined this issue and have estimated the costs to the state of retiring or refinancing that debt would total over $300 million. Further, UTA's advisors have not found an easy way for the state to assume UTA ownership while preserving the local sales tax revenue model without the risk of a legal challenge by bondholders. However, there may be workable options that can mitigate the costs and risks over time.

Discussion:

The 2019 State of Utah CAFR shows that UTA has approximately $2.264 billion in outstanding revenue bond debt issued over the past 22 years to fund capital construction projects, primarily related to the TRAX light rail system and the Front Runner commuter rail line. As of the March 2020 bond issuance, the projected retirement date for the existing debt is 2044. For fiscal year 2019, revenue bond debt service payments totaled $112.3 million, or 24% of UTA's operating expenses.

UTA's municipal advisors and bond counsel have described various options as potential approaches to resolving how the outstanding debt gets paid if a transition were to occur. Among these are:

- UTA retaining financing capabilities indefinitely with project delivery, operations, and management functions being transferred to one or more state entities. In this case, UTA remains solely as a financing vehicle, with the operation of the transit service assigned to a new and separate entity.
- UTA retaining responsibility for servicing the outstanding bond obligations. The state will then issue new debt going forward as needed to support capital projects, with the goal of taking advantage of refunding opportunities to wind down the UTA bond portfolio without incurring the costs of a full defeasance.
- An alternative arrangement is worked out to parallel the state university structure. UTA could remain in place, along with additional steps to improve the legislature's comfort with UTA's management process. These steps may include more robust legislative oversight and approval of UTA borrowing in addition to securing the approval of the State Bonding Commission that is currently required.

In addition to the long-term bonded revenue debt obligations, UTA also utilizes capital lease obligations to fund rolling stock acquisition such as buses, rail cars, locomotives, vans, and other vehicles. The 2019 CAFR shows total outstanding lease obligations at $52.187 million.

Considerations:

- According to estimates provided by UTA's municipal advisor, the likely gross additional cost to refinance the UTA debt and fund an investment account to retire the refinanced debt is approximately $415 million, which represents the cost of purchasing securities whose principal and interest will be sufficient to retire the various UTA debt obligations over time, presumably to any early redemption dates (referred to as "defeasing" the debt). Prepayment provisions, which are standard in municipal debt, preclude simply prepaying all debt at the current time. Funding such an account would cost approximately 14% more in present value terms than paying the debt as it becomes due. Expressed in dollars, this is a present value cost of roughly $306 million.
- UTA's bond counsel advised the project team there doesn't appear to be a simple way to preserve the existing local option sales tax revenue collection mechanism while transferring agency ownership to the state without risking bondholder legal action. Potential risk arises from a scenario where an attempt is made to change the underlying security provisions while keeping the bonds outstanding. However, it should be noted that switching from a pledge of local sales tax revenue to a state-level general obligation pledge could be seen as favorable to bondholders due to the improved credit quality inherent in the pledge of the full faith and credit of the state.
- A detailed legal analysis to identify specific covenants or provisions in the bond indenture that could be violated in the event of a transfer of ownership, and potential remedies, will be important in any future service delivery models considered.
- The assignment or renegotiation of an unknown number of capital leases will likely be required in any future change to UTAs legal entity status.

Issue 2: State Credit Rating

UTA's debt is secured solely by the pledge of local sales tax revenue. No court has ruled whether a transition of UTA to state entity status would risk adding to the state's constitutional debt limit. According to the State Treasurer and the state's fiduciary municipal advisor, UTA's debt obligations would be included in rating agency calculations of net tax-supported debt. They could, therefore, adversely impact the state's credit profile and perhaps even its AAA bond rating. A downgrade of the state's credit rating would increase the cost of future borrowings.

Discussion:

The State of Utah has a constitutional debt limit equal to 1.5% of the state's total taxable property value and enjoys a AAA bond rating from all three primary credit rating agencies on its general obligation debt. As of July 1, 2020, the debt limit was $6.9 billion, of which $2.8 billion was currently outstanding, or 41% of the limit inclusive of unpaid annual leave obligations for state employees. The bulk of UTA's debt is secured solely by an irrevocable pledge of local option sales taxes. No court has ruled whether UTA's debt would need to be included in the debt limits placed on the state.

UTA issues revenue bonds backed by local sales taxes collected by the state and transferred to the agency. UTA doesn't control the tax levy and thus has no control over its revenue stream. As a result, it does not have a coverage covenant, only an "Additional Bonds Test" covenant, meaning that if revenues are insufficient to meet required coverage, the only remedies available are to wait until revenues increase.

Considerations:

- The State Treasurer has stated that transitioning UTA into the state government structure would adversely impact the state's credit profile and possibly also its bond rating once rating agencies incorporate UTA's outstanding debt into calculations of the state's net tax-supported debt ratios.
- Based on an analysis of recent municipal bond trading activity in the secondary market, the cost of a hypothetical state credit rating downgrade of one notch (e.g., AAA to AA+) would equal an additional debt service expense of 20 to 25 basis points on the interest rate, or $2,000 to $2,500 per $1 million per year the principal of new debt is outstanding, subject to market conditions. For a 15-year, level debt, $100 million state bond issue, a downgraded rating would result in increased annual interest costs of approximately $200,000 to $250,000 in the early years and approximately $1.8 million to $2.2 million over the life of the issue.
- The Treasurer has also advised the project team that any adverse impact(s) from a downgrade of the state's bond rating would extend to debt issued by public entities afforded credit enhancement support by the state, increasing their borrowing cost commensurately. Examples include Utah school districts (in the form of a guaranty - $3.5 billion outstanding), charter schools (in the form of a moral obligation pledge - $432.9 million outstanding), and the Utah System of Higher Education (in the form of a moral obligation pledge - $1.54 billion outstanding).

Issue 3: Interlocal Sales Tax Agreements

These contractual arrangements with the local jurisdictions served by UTA provide the mechanism through which UTA receives local option sales tax revenues to support the projects covered by the agreements. These revenues are irrevocably pledged to the service of the outstanding bonded debt, and revenues over that amount are used to underwrite operational costs. Of the 13 existing interlocal agreements, ten have no provision for successors and assigns. Therefore, a need to amend or replace existing ILAs could arise in a future transition scenario to provide the necessary financial support to the successor entity. The state could create a new, replacement tax mechanism to raise the needed funding in the alternative.

Discussion:

UTA has no independent taxing authority. Under Utah Code Sections 59-12-2201 through 59-12-2220, Local Option Sales and Use Taxes for Transportation Act, four counties within the UTA service district levy and collect local sales and use taxes within their jurisdictions to support public transportation. These four counties include:

- Salt Lake County
- Davis County
- Weber County
- Utah County.

Two other counties include cities that levy sales and use taxes within their corporate limits and certain unincorporated areas where sales and use taxes are levied. These include:

- Box Elder County cities of Brigham City, Perry and Willard

- Tooele County cities of Tooele and Grantsville and the unincorporated areas of Erda, Lakepoint, Stansbury Park and Lincoln.

The UTA has irrevocably pledged sales and use taxes to the payment of revenue bonds issued by UTA with remaining amounts used by UTA to offset operating expenses.

UTA has entered into 13 interlocal cooperation agreements, 12 with local governments in the service area and one with UDOT. The interlocal cooperation agreements in place include:

- Salt Lake County (Sales Tax Revenue Transfer for Commuter Rail and Light Rail Projects) – no successor and assigns clause
- Utah County (Sales Tax revenues Transfer for Fixed Guideway, Transit Projects and Transit System) – no successor and assigns clause
- Utah County (Project Advance and Transfer of 8% Part 15 Tax Revenues for Local Highways of Regional Significance) – no successor and assigns clause
- Utah County Amended and Restated Interlocal Cooperation Agreement Utah County (Project Advance and Transfer of 8% Part 15 Tax Revenues for Local Highways of Regional Significance) – No successor and assigns clause
- Utah County (Provo-Orem Bus Rapid Transit Project Funding) – includes successors clause
- Utah County (Related to the Use of Public Transit District Portion of Funding Generated Under UCA 59*12-2219 Local Option Sales Tax, If Adopted) – includes successor and assigns clause
- Willard City (Sales Tax Revenue Transfer for Transit Projects, Right of Way Acquisition and Corridor Preservation) – no successor or assigns clause
- Perry City (Sales Tax Revenue Transfer for Transit Projects, Right of Way Acquisition and Corridor Preservation) – no successor or assigns clause
- Brigham City (Sales Tax Revenue Transfer for Transit Projects, Right of Way Acquisition and Corridor Preservation) – no successor or assigns clause
- Salt Lake City Corporation and Utah Transit Authority Transit Master Plan Implementation Interlocal Agreement – no assignment clause baring assignment without the consent of the other party
- Addendum No 1. To Salt Lake City Corporation and Utah Transit Authority Transit Master Plan Implementation Interlocal Agreement (Mobilization Funding)– no successor or assigns clause
- Addendum No 2. To Salt Lake City Corporation and Utah Transit Authority Transit Master Plan Implementation Interlocal Agreement (2019-20 FTN Routes) – no successor or assigns clause
- UDOT (ILA re Transfer of 20-2214(3)(b) Revenue) – no successor or assigns clause.

The agreements with the local governments were entered into by the parties for the provisions of specific transit services and require the cities and counties to impose local sales and use taxes, which are collected by the Utah State Tax Commission and remitted to UTA. The exception to this is the agreement with Salt Lake City, which provided for the city to pay UTA directly for the incremental cost of providing the services included in the agreement.

Considerations:

- A review of these 13 interlocal cooperation agreements reveals that ten do not contain a "successor and assigns" provision, meaning there is no assignment right. Therefore, the ILAs will need to be modified to allow the sales tax revenue and other pledged revenues to be directed to the successor entity. One of the Salt Lake City agreements specifically does not permit assignment without the other party's consent. The remaining two allow assignment should UTA be dissolved as an entity.
- If any of the options to proceed with a state entity transition occur, there could be a need to amend or replace existing ILAs to provide the necessary support for servicing new debt issues and continuing support of transit operations.
- The renegotiation of the ILAs could become a serious matter for litigation by a number of parties. If a transition were to occur, a well-researched legal option from UTA' s bond counsel would be warranted.
- If the legislature chooses to maintain UTA as a financing entity alone, with transit operations, capital project planning, and project delivery transitioned into one or more successor entities, the parties to the existing ILAs could arguably remain intact. No renegotiation or renewal would be required until the agreements' expiration date or the debt's retirement, whichever comes later.
- The cost of legal expenses could vary significantly depending on whether in-house or outside counsel is provided. Typically, these transactional types of legal tasks would be performed by in-house counsel, thereby minimizing costs.

Issue 4: Funding of New Debt

The current UTA capital improvement program anticipates the need for $71 million in new debt through fiscal year 2024. It is reasonable to expect that UTA or its successor entity will need to finance additional new capital project investments via the sale of bonds beyond that time horizon. If UTA becomes an entity of state government, those future debt obligations could become an obligation of the State of Utah absent updated agreements with the local jurisdictions to renew their sales tax commitment.

Discussion:

Future expansions and improvements to the UTA system may require the issuance of new bonded debt to finance capital projects.

A review of UTA's borrowing history over the past ten years, and focusing on new debt only (ignoring refinancing), debt issues totaled $62 million in 2019, $84 million in 2018, $180 million in 2012, $100 million in 2011, and $200 million in 2010, for a total of $626 million in new capital funding.

The approved Utah Transit Authority Five-Year Capital Plan for the years 2020-2024 anticipates the need for $48.6 million in 2020, $9.8 million in 2021, $4.2 million in 2022, $4.2 in 2023, and $4.2 million in 2024 for a total of approximately $71 million over the next five years.

To the extent that a transition of UTA to state entity status requires new debt to be issued by the State of Utah, those obligations could become the state's responsibility. How the state would issue any new debt will depend largely on its ability to continue the funding relationship with the cities and counties so that it can pledge the local sales taxes to future bonds. If that relationship can be maintained and any legal issues related to existing bondholders are satisfied, the state then has the choice of adding its general obligation pledge to reduce transit borrowing costs or relying solely on the sales taxes to support new debt. Alternatively, if the state needed to find a new financing source for new debt, the impact on state resources would be dollar for dollar of new debt service requirements.

Considerations:

- Depending on the legal status of the successor public transit provider – independent state entity or executive branch agency – and the nature of that debt – general obligation vs. revenue supported – that debt could accrue against the constitutional limit, impact the state's credit rating, or both.

Issue 5: Sales and Use Tax Limitations

State law defines the allowable uses of sales and use taxes and, in some instances, the code prohibits the expenditure of those funds for transit operating and maintenance costs. If UTA were to transition to a state entity, and if new funding arrangements were required beyond those currently in place, it will be important to examine and rectify any limitations that might impede such funds' availability to support transit service delivery.

Discussion:

Title 59 of the Utah Code establishes the authority and requirements for the imposition of taxes within the state. Chapter 12 speaks to sales and use taxes and defines the allowable uses of the sales and use taxes that cities and counties are authorized to impose. In some instances, the code prohibits such funds' expenditure on a public transit district's operating and maintenance expenses. Other sections require that certain portions of the sales and use taxes be allocated to public transit districts.

Interpretation of either the authority or the Utah Code's restrictions is a legal matter and not within the consulting team's scope of work. However, it is important to understand what, if any, affect the transition of UTA to a state entity would have on the availability or uses of these revenue streams to any successor to UTA.

Considerations:

- If UTA were to transition to state entity status, amendments to sections of the state statutes might be needed to allow the use of these taxes for public transit operations and maintenance expenses by the successor entity.

Issue 6: Other Contractual Agreements

In addition to the previously addressed interlocal sales tax agreements, UTA is a party to thousands of other contractual relationships. Each agreement would need legal review and a determination as to the necessary course of action in the event of a change to UTA's entity status. Such review costs could be significant, depending on the resolution method, either in time for in-house staff or dollars if assigned to outside counsel.

Discussion:

UTA has numerous types of legal agreements, including, for example:

- Contracts with vendors
- Software licenses
- Equipment lease-purchase agreements
- Cooperative agreements with other governmental agencies
- License agreements
- Track access permits
- Right of entry agreements
- Easements for facilities
- Other legally binding agreements.

This study did not include a total count of all the documents that would need review and modification as a part of a transition. UTA's real estate inventory in 2019 showed they had 3,096 licenses and leases in place and 43 in process. UTA staff members advised the project team that there are more than 6,000 license agreements with other agencies currently in place. Assuming, for analytical purposes, that other agreements are fewer in number than licenses, in the range of half, there could be approximately 9,000 documents to review if a transition were to occur.

Considerations:

- A detailed review of legal agreements would be prudent to determine their assignability or the need for amendments or renegotiations if a transition were to occur.
- The cost of legal expenses could range significantly depending on whether in-house or outside counsel is provided. Typically, these transactional types of legal tasks would be performed by in-house counsel, thereby minimizing costs.
- Additional legal costs or unexpected time delays, or both, could be incurred if issues arise with any of the agreements under review, such as third-party claims of property rights, reconciliation of unexpected conflicts in contractual terms, or other disputes.

Issue 7: Spending Authority

Depending on the organizational model chosen for any potential UTA transition, adaptations of the current fiscal planning, budgeting, expenditure controls, oversight and other fiscal management practices and procedures may require revision to conform to state law, standards and processes. Also, because the State of Utah and UTA operate on different fiscal calendars, a fiscal year transition plan could become necessary.

Discussion:

UTA's budgeting spending processes are managed independently of the state. Final spending approval is provided by the Board of Trustees and subject to compliance with the regulatory requirements of the Federal Transit Administration (FTA), Federal Railroad Administration (FRA) and other regulatory agencies. If a transition were to occur, and depending upon the organizational model chosen by the legislature, both operating and capital budgets could be subject to the regular appropriations processes and legislative oversight required of other state agencies. This could require some significant adjustments to the internal budgetary and operational planning processes, reporting requirements, spending approvals, and a future transit entity's fiscal practices.

Additionally, UTA and the State of Utah operate on different fiscal years. UTA’s fiscal year is the calendar year, while the state’s fiscal year runs from July 1 – June 30. If a transition is pursued, it may be that the successor entity’s fiscal year will require alignment to the state’s fiscal year.

Considerations:

- Revision or adaptation of state budgeting and spending policies, processes and practices may be necessary to maintain compliance with regulatory requirements, documentation, reporting, and other related financial management expectations.
- A fiscal year transition plan to migrate the transit agency’s financial planning, budgeting, and report cycle to the State of Utah fiscal year will likely be required if a transition occurs. Additionally, this plan could necessitate the restatement of more recent fiscal year financial reports to enable historical data comparability.
- Some modest costs may be incurred due to a potential need for process analysis and redesign, staff training, development of reporting templates, and any adjustments to documentation and approval practices.

Issue 8: Service Equity Model

UTA strives to maintain a close balance between the revenues contributed and the value of transit services received by each taxing jurisdiction in its service area. The UTA service equity model, distinct from other federally-required equity-bassed assessments, analyzes five-year trends in revenues and costs and is used by management to make service adjustments needed to maintain equitable balance. Depending on any future funding model's structure, continued attention to the balance of taxes levied and services received could become important.

Discussion:

Under Utah Code 17B-2a-806(3), UTA's policy is to annually examine the balance between the revenues received and the value of transit services provided for each county in the service area. The performance goal for the balance between financial contributions and service received is ± 5%. UTA service planners track the five-year trends in revenues and expenses and make recommendations for service adjustments as needed to maintain the necessary balance.

The service equity analysis has been an essential element of UTA's service planning decision-making process since the early to mid-2000s, and its results serve as the assurance to the local jurisdictions that the funds they are directing to UTA, including sales tax, farebox revenue, federal grants, and bond proceeds are applied in the balanced manner intended.

Service equity is of particular interest and importance to the participating jurisdictions. There is a clear expectation that service equity is monitored, that the analysis is updated regularly, and that needed service adjustments are made per the results.

UTA's service equity analysis is different from other equity-based analyses regularly conducted by UTA under Title VI of the Civil Rights Act of 1964 and the Americans with Disabilities Act, which are meant to assure social equity in the availability of, and access to, public transit services.

Considerations:

- If funding for transit remains supported at the local level, a continued effort will be needed to ensure equity among funding entities.
- The relative emphasis on local vs. regional transportation needs when establishing services and allocating capital funds for future project development could become an important consideration in the design of any future transit funding and service delivery model.
- If the current funding model based on locally-levied sales taxes were to be replaced by a regional or statewide model, the emphasis and reliance on this model could diminish.

Issue 9: Revenue Volatility

Significant ridership and farebox revenue declines experienced due to the COVID-19 pandemic illustrate the sensitivity of transit revenue streams and service demand to factors beyond the organization's ability to control. In this instance, the availability of significant federal relief funds helped UTA dampen the revenue shortfall's impact. If the transit agency were to become a part of Utah State Government, future policymakers could face the need to address similar crises with state funds.

Discussion:

Recent events triggered by the COVID-19 pandemic have illuminated how vulnerable the transit industry is to risks from economic contingencies wholly outside their ability to control. UTA's reporting shows that system-wide ridership for weekdays, Saturdays, and Sundays declined by 58% from pre-COVID 19 levels in early March to April 7. For the same period, commuter rail ridership was down 71%, paratransit ridership declined by 62%, light rail ridership was down 60%, and fixed-route bus ridership was down 53%. By mid-September of 2020, ridership has increased by 71% of the April 7 lows. Comparing 2020 ridership through August to the same period in 2019, UTA's ridership across all modes is down 40%, from 3,962,996 boardings for the first seven months of 2019 to 2,375,753 boardings in January through August of 2020.

UTA's July 2020 dashboard shows that year-to-date sales tax revenues through June were $167.6 million against a $166.9 million budget or a slight positive variance of 0.4%. For the same period, farebox revenue was $10.1 million below budget, for a 32% decline, while operating expenses were up $15.4 million. UTA staff is projecting that farebox receipts could be 15% under previous forecasts for the foreseeable future as a result, in part, of the increasing acceptance of remote work arrangements.

Besides implementing significant service adjustments to adjust to decreased demand, UTA implemented enhancements to its vehicle and facility cleaning protocols, including the installation of bus operator barriers, hiring 12 additional cleaning service workers to clean, increasing staffing levels on the rail cleaning contract, and initiating the procurement of vinyl seats for TRAX. These measures all seek to improve both passenger and operator protection.

Offsetting the impact of revenue losses and cost increases, UTA has been awarded $187.2 million in CARES Act relief funding. Of that, $138 million, or 73%, is allocated to operator wages and benefits. UTA expects to expend approximately 46% of its CARES Act allocation in 2020, with 50% and 4% projected for 2021 and 2022, respectively.

Considerations:

- While the transit industry's vulnerability to volatile revenue streams is not contingent upon the transit agency's legal form or structure, policymakers should be aware of this risk if the state assumes full responsibility for managing the public transit service.

Human Resources Issues

Issue 1: Collective Bargaining Agreement

Approximately two-thirds of the UTA workforce is unionized and represented by the Amalgamated Transit Union. The balance of the UTA workforce has the right under state law to organize for collective bargaining purposes. Conversely, state government workers have no union representation, though a non-union employee association does exist. Additionally, all mass transit workers have special protections under Section 13(c) of the Federal Transit Act. If UTA were to become a state entity, legislative action could be necessary to recognize the union and ensure bargaining rights and employee wages, benefits, and working conditions. Decision-makers might also consider that the introduction of a unionized workforce into the existing non-union workforce could expose the state to employee grievances and lawsuits regarding a range of employment-related matters.

Discussion:

As authorized under Section 17B-2a-813 of the Public Transit District Act, employees of a public transit district in the State of Utah have the right to self-organize, join or form a labor union, and bargain collectively, subject to a prohibition on strikes. The act requires the UTA to "recognize and bargain exclusively with any labor organization representing a majority of the district's employees in an appropriate unit with respect to wages, salaries, hours, working conditions, and welfare, pension and retirement provisions …"

UTA has a contract with the Amalgamated Transit Union (ATU), which covers 1,810 of UTA's 2,729 authorized positions, or 66% of the total workforce. These positions are concentrated in the operations and maintenance related activities of UTA. The non-represented employees are administrative in nature, providing professional, technical and managerial services to the organization. While not currently represented by a union, these administrative workers also have the legal right to organize for collective bargaining purposes.

Conversely, no collective bargaining agreements cover state workers at any level. While the voluntary Utah Public Employees Association exists to advocate for state employees, it does not have collective bargaining rights.

Mass transit workers – those covered by a collective bargaining agreement or not – are afforded special protections under federal law as a condition of receiving federal grant funds. Section 13(c) of the Federal Transit Act requires that recipients of FTA grants provide "fair and equitable" arrangements to protect mass transit worker rights, including preserving rights under existing collective bargaining agreements and the continuation of those bargaining rights. As an integral part of the grant award process, the FTA must receive a certification from the U.S. Department of Labor that such protections are in place before grant funds can be released.

From the state's perspective, concerns could be raised about introducing a unionized workforce into the existing non-union environment. Integration of the workforce would require the state to comply with the terms of the collective bargaining agreement and bargain with the union on terms and conditions of employment. It might also result in the state's direct involvement in the contractual grievance process and engagement in both interest and grievance arbitrations. The exclusive representative (union) may also have more resources to engage in litigation with the state regarding pay and benefit equity and other employment-related matters.

Considerations:

- State legislative action would likely be needed to recognize the union and ensure the preservation and continuation of bargaining rights and employee wages, benefits, and working conditions, especially if UTA were fully absorbed into the state government's executive branch. It may be possible to mitigate risks if the successor entity is established as an independent state entity and the existing collective bargaining agreement remains intact.
- Exposure to litigation costs exists if the existing workforce protections, compensation, benefits, and working conditions of UTA workers are reduced or revoked in any future transition.

- Action would likely be needed to address existing worker rights to protect the successor entity's eligibility for FTA operating, maintenance and capital grants, currently valued at $116 million.
- Administrative/white-collar workers of UTA could organize and secure the protections provided by a collective bargaining agreement.
- The Utah Department of Human Resource Management (DHRM) does not employ specialists in the management of a unionized workforce and, according to DHRM's Executive Director, would seek to employ existing UTA labor relations specialists to meet this need in the event of a transition.
- Introducing a unionized workforce into the existing non-union workforce could expose the state to employee grievances and lawsuits regarding pay and benefit equity and other employment-related matters.

Issue 2: Pension Plan

With the passage of Senate Bill 136, the legislature directed the completion of a study of the feasibility of UTA becoming a part of the Utah Retirement System. The analysis showed that the UTA and URS retirement benefits were roughly comparable to one another, depending on the transition approach selected, but that there is a strong likelihood that the Amalgamated Transit Workers will litigate any pension benefit changes and that UTA could be subject to a Section 13(c) labor rights challenge that could risk or delay future federal grant awards.

Discussion:

UTA and the State of Utah have separate pension plans. A study of the issues involved in a potential transition of UTA employees to the Utah Retirement Systems (URS) was mandated by S.B 136, along with this state entity transition feasibility study. The retirement benefits study was required to address:

- The feasibility of UTA becoming a participating employer in the URS pension program
- Any legal or contractual restrictions on any employee covered under a collectively bargained retirement plan
- A comparison of the costs and benefits available in retirement plans offered by UTA and other similar public employee retirement systems.

The retirement benefits study was conducted in two parts, including a financial feasibility assessment performed by AON and a legal analysis prepared by Thompson Coburn and reviewed by the Utah Attorney General.

The study evaluated the financial and legal aspects of three potential approaches to transitioning the UTA pension program to URS:

- New hires after January 1, 2021, are transitioned to URS, with current employees remaining in the UTA plan
- A "soft freeze" approach wherein all UTA employees enter the URS plan and current employees with UTA plan benefits increasing with future salary growth only and new hires after January 1, 2021, participating only in URS

- A "hard freeze" approach wherein current UTA employees start participating in URS with UTA plan benefits frozen as of January 1, 2021, and new hires after January 1, 2021, participating only in URS.

As summarized by UTA management in a memo dated September 30, 2019, the key findings and conclusions of the report are:

- Legal Analysis
  - There is a strong likelihood that the ATU local 382 will litigate any changes to the pension benefit
  - Based on past history, the ATU can be expected to object through the Department of Labor to the award of federal grants under Section 13(c)
  - The potential for the delay or denial of federal grants exists.
- Financial Analysis
  - There is a limited retirement income replacement benefit difference between UTA's current defined benefit plan and the URS Tier 2 hybrid (combined defined benefit and defined contribution) plan
  - The UTA's pension multiplier is higher than the URS plan's comparison, but the cost-of-living adjustments in the URS plan increase the benefit to an income replacement level comparable to that in the UTA plan.

The retirement benefits study results were presented to the Transportation Interim Committee in its October 2019 meeting, as required by S.B. 136.

Considerations:

Legal Issues identified by Thompson Coburn:

- If a pension system transition were to occur during the term of a collective bargaining agreement, the ATU could "challenge any action that would impose conditions inconsistent with the current [contract] … and the court could require the UTA to honor its current [contract] until it expires."
- If a pension system transition were to occur after the expiration of a collective bargaining agreement term, and the legislature should mandate the transition to the state, the ATU would likely challenge that mandate.
- Moving employees participating in the UTA retirement plan into the URS plan would likely result in Section 13(c) labor protection challenges.

Financial findings from AON:

- If current employees remain in the UTA pension plan and only new hires enter the URS, pension costs are projected to be $5.2 million less than current pension costs to UTA over the next 20 years.
- If the "soft freeze" option is elected, pension costs are projected to increase by $8 million over the next 20 years.
- If the "hard freeze" option is selected, pension costs are projected to decline by $16.8 million over the next 20 years.

Issue 3: Employee Compensation & Benefits

UTA's transition into the executive branch of state government could trigger the need to merge the existing, separate compensation and benefit plans. Were a transition to occur to an independent state agency status, this need could be mitigated. The process of integrating and rationalizing the separate plans while maintaining both internal equity and market competitiveness could become a significant and challenging undertaking. Real or perceived losses of compensation or benefits, among both UTA and state personnel, could become the subject of grievances and litigation or could serve as a catalyst of attrition among those with specialized skill sets and the greatest market demand.

Discussion:

The UTA classification and compensation system is entirely separate from that of the State of Utah. If UTA were transitioned to full state agency status, a considerable effort to consolidate and integrate the UTA classifications and pay schedules with the state plan would be necessary. Additionally, state employee benefits, including health insurance, seniority, and leave, vary in multiple ways from current UTA benefits, and these, too, will most likely require reconciliation in the event of a transition to state agency status. Options may include:

- Adopting an independent classification and compensation plan for the new transit entity within the state system
- Expanding the state classification and compensation plans to accommodate transit-specific roles and responsibilities not currently covered within the state system.

If the successor entity in any potential transition of UTA to the state was structured as an independent state entity/component unit, it might be possible for the existing classification and compensation program to remain intact. For example, the eight public universities in the State System of Higher Education, operating under the Governor-appointed Utah Board of Higher Education, maintain human resource management functions independent of the Utah Department of Human Resource Management, with their own job classifications, salary schedules, and benefit plans.

Considerations:

- The full integration of the UTA workforce into the State of Utah's compensation and benefit programs could become a significant undertaking in terms of cost, time, and employee impact.
- Development of a comprehensive human resources transition strategy could be necessary to ensure that industry-competitive compensation structures are preserved and that personnel with specialized skill sets are retained to operate an efficient, effective, and compliant public transit service.
- Depending on the organizational model chosen for any future transition, the potential for downsizing of the UTA workforce, state workforce, or both exists as opportunities to capture economies of scale in the transitioned entity or entities are identified and implemented.
- Losses in employment, compensation or benefits would likely become the subject of litigation.
- Other important compensation and benefits transition considerations could include:

  - Establishing market compensation benchmarks for specialized, transit-related positions
  - Slotting UTA employees into the state's grade structure
  - Consolidation of job classifications sharing common duties, responsibilities, and qualification standards with state counterparts
  - Identification and mitigation of potential equal pay issues
  - Reconciliation of UTAs merit pay program with the State of Utah's compensation philosophy
  - Timing/phasing of the transition to the successor compensation model
  - Integration of UTA bargaining unit and non-bargaining unit employee health benefit plans (ATU plan is in a trust)
  - Transfer of employee tenure for purposes of seniority, leave, and other benefit eligibility
  - Transfer or pay-out of UTA employees' accrued leave.

– Based on the consulting firm's experience in public sector classification and compensation program design, an independent consulting study's cost is estimated at $250,000 or more, along with an estimated 5%-12% salary costs to slot employees into the appropriate state pay grades at least at the entry-level rate.

Issue 4: Talent Retention

UTA's workforce of over 2,700 personnel includes several specialized, transit-specific jobs at all organization levels. In 2019, UTA calculated that the cost of turnover in the operator ranks totaled $2.1 million. Some published reports, citing data compiled by the Society for Human Resources Management, say that direct employee replacement costs can reach as high as 50% - 60% of an employee's annual salary. The design and implementation of specific initiatives for the engagement and retention of mission-critical workers are considered a best practice in large scale organizational change initiatives. They could be a valuable transition tool to ensure the continuity UTA of operations and federal grant funding.

Discussion:

A public mass transit system's effective operation requires a diverse workforce, many with specialized experience, training and skillsets. UTA hires 500+ employees per year and experiences 24–26% turnover in the first two years for operators, requiring an ongoing and continuous effort to attract, hire, train, develop and retain a qualified workforce.

Large scale organizational change can be disruptive and unsettling. Successful organizational change initiatives require close attention to the financial, structural, procedural and technical aspects of change, but also to the human dimensions of the change to minimize the risks attendant to employee disengagement, productivity loss and attrition.

A 2016 research report on Business and Human Capital Challenges, supported by the Society for Human Resources Management (SHRM) Foundation, found that "C-Suite" executives were most likely to cite high-performing employee retention as their most critical human capital management concern. The same survey showed that HR professionals were most likely to point to high employee engagement levels as their most pressing need.

UTA leaders interviewed for this study reported similar challenges. They report that they worry about the risk of losing key personnel, along with their accumulated experience and knowledge, in the face of uncertainty regarding the future direction and organization of UTA.

There are also concerns regarding the workforce impacts of any future migration of the UTA workforce to the state's human resources management system and the need to protect the transit organization's ability to recruit and retain specialized personnel. Selected examples of the kinds of employees unlikely to have direct counterparts in the state government structure include:

- Management Level
  - Commuter Rail General Manager
  - Director of (Transit) Asset Management
  - Director of Innovative Mobility Solutions
  - Light Rail General Manager
  - Bus Business Unit General Manager
  - Manager Ticket Vending Machine Assets
  - Manager, State of Good Repair
  - Senior Manager, Real Estate and Transit-Oriented Development.
- Knowledge Workers and Technical Specialists
  - Coordinator, Mobility Grant Administration
  - Fare Revenue Analyst
  - Fleet Engineer
  - Operations Planner
  - Railroad Regulatory Compliance Specialist
  - Researcher, Innovative Mobility Solutions
  - Service Planner
  - Transportation Planner.
- Technical Specialists
  - Paratransit Eligibility Specialist
  - Bus Operations Trainers
  - Flextrans Radio Control Coordinator
  - Scheduling Specialist
  - Transit Communications Dispatcher
  - Coordinator, Mobility Grant Administration.

Considerations:

- UTA's Chief People Officer has calculated the approximate cost of turnover for Bus Operators at $12,534. In 2019, UTA hired 169 operators to replace employees lost to turnover for a calculated $2.1 million cost. Some published reports, citing SHRM data, say that direct employee replacement costs can reach as high as 50%-60% of an employee's annual salary.

– Design and implementation of specific initiatives for the engagement and retention of mission-critical workers and those in key leadership roles, knowledge workers and transit technical specialists may be warranted to ensure the continuity of operations and federal grant funding.
– DHRM officials advised the project team that they are not staffed to effectively recruit transit-specialized personnel and, in light of the reported high rates of employee turnover in transit operators, would seek to capture UTA's expertise in this area in any state entity transition.
– Engagement of a consultant to assist in developing a workforce retention strategy and succession plan, supported by an organizational change management and communication program, would likely cost in the range of $200,000 - $300,000 in consulting fees.

Regulatory Issues

Issue 1: Continued Grant Eligibility

In fiscal year 2019, UTA received $116 million in Federal Transit Administration funding to support both operations and capital expenses. To ensure the continuation of such support, any successor entity to UTA must demonstrate that it has "sufficient legal, financial, technical, and management capacity, and functional capacity" to meet the terms of the FTAs master grant agreement. The project team assesses the risk of losing grant eligibility as low, assuming that UTA's existing public transit and compliance expertise is retained in any future transition.

Discussion:

UTA benefits from the substantial financial support provided by federal grant programs administered through the U.S Department of Transportation. To receive federal assistance appropriated or made available for the grant, cooperative agreement, loan, loan guarantee, line of credit, and major credit instrument programs FTA/DOT administers, each applicant for FTA assistance must submit the annual Certifications and Assurances required for the type of assistance it seeks before FTA may make an award to support that applicant's request.

For fiscal year 2019, the UTA operating budget included $66 million in operating and preventive maintenance grant revenue from the Federal Transit Administration. That number is expected to grow to $73 million by fiscal year 2023. Also, over $50 million in federal grant funding is included in the F.Y. 2019 capital budget for UTA.

In interviews conducted for this review, FTA officials advised that, as a general principle, the organizational structure and governance models of transit systems are considered local decisions. However, before any successor entity to UTA can receive federal transit funding, that entity must demonstrate that it has "sufficient legal, financial, technical, and management capacity, and functional capacity" to meet the terms of FTA's master grant agreement. This means that the FTA will be sensitive to the risk of loss of UTA personnel and the accumulated knowledge, expertise and experience in public transit management that they represent.

Links to critical regulatory documents defining the compliance requirements for FTA grant awards include:

Annual List of Certifications and Assurances for FTA Grants and Cooperative Agreements for fiscal year 2020.

FTA Master Agreement for fiscal year 2020.

In addition to the FTA regulatory oversight, UTA is also subject to the Federal Railroad Administration (FRA) rules and regulations concerning the FrontRunner commuter rail service. UTA's Positive Train Control project is an important UTA initiative in which the FRA has direct regulatory oversight. UTA also has certain waivers of FRA safety regulations. The status of each of these safety-related issues are published here:

UTA FrontRunner PTC Implementation Plan Status

UTA Docket for FRA Waiver Requests, some of which may require renewal review.

Considerations:

– This risk of losing grant eligibility is assessed as low, assuming that the existing legal, financial, technical, and management capacity represented by the staff's accumulated knowledge and expertise currently resident within UTA is preserved in any potential transition.
– Adverse changes in key indicators of system safety, compliance, or performance could trigger a "special review" by the FTA to ensure that the successor entity is fully capable of successfully managing a compliant public transit program.

Issue 2: State Safety Oversight

Federal regulations require that each state with FTA grant-eligible rail fixed guideway transit systems establish an independent State Safety Oversight (SSO) office to provide safety and security oversight of those systems. To establish independence from UTA, the State of Utah established the State Safety Oversight function within UDOT. Any future organizational model for UTA that does not impair the State Safety Oversight office's legal and financial independence will most likely be acceptable to FTA. If UTA's light rail operations were consolidated within UDOT, the SSO's legal and financial independence could be called into question.

Discussion:

As a recipient of Urbanized Formula Grants, UTA must develop and submit a Public Transportation Agency Safety Plan (PTASP) to the FTA that documents the organization's processes and procedures for implementing a compliant Safety Management System.

FTA regulations further require (49 CFR Part 674) that each state with FTA grant-eligible rail fixed guideway transit systems establish a legally and financially independent office to conduct safety and security oversight of those systems in compliance with federal standards, including the review and approval of the PTASP. The State of Utah has established and certified a State Safety Oversight Office within UDOT and is fully certified and compliant with FTA rules. UDOT has a current PTSAP approved and in place.

The State Safety Oversight Officer has documented a comprehensive set of rail transit safety oversight procedures and standards, and both the UDOT State Safety Officer Program

Manager and the UTA Safety and Security Manager report excellent working relationships and collaboration.

Considerations:

- Any future organizational model for UTA that does not impair the SSO's legal and financial independence will most likely be acceptable to FTA. If UTA were fully integrated within UDOT, the SSO's legal and financial independence could be called into question. In that event, a reconsideration of the SSO's placement within UDOT may become advisable. Other states have assigned the State Safety Oversight role to non-transportation-oriented departments, including Public Utilities Commissions, Departments of Public Safety, or an independent state commission, to assure the required independence.

Issue 3: Asset Transfers and Continuing Control

Public transit operators must provide legal assurances to the FTA that assets acquired with federal assistance will remain available for their intended purpose over their useful life or until disposition. Transfers or dispositions of any such assets in a future transition scenario must comply with the federal regulations' asset transfer provisions. Assets owned, controlled or managed by UTA without federal funding may also be encumbered by contractual provisions that will need to be addressed in the event of a transition of ownership.

Discussion:

The FTA has promulgated rules governing grantees' management of public transportation assets. Facilities, vehicles, equipment, and other assets acquired with FTA funding support must be systematically managed through the entire life cycle from acquisition to disposition. FTA support recipients are required to maintain "satisfactory continuing control" over those assets. This means that the transit entity must provide legal assurances that assets acquired with federal assistance will remain available for the purpose for which they were purchased over their useful life or until final disposition.

Transfers or dispositions of any assets acquired with federal assistance – including real property, equipment and other assets – must conform to the applicable asset transfer provisions of the regulations, found in Chapter III of FTA Circular 5010 Award Management Requirements.

Transfers of FTA-funded assets from one transit organization to another transit organization must be documented to demonstrate acceptance and the assumption of responsibility for the asset over its remaining useful life, must be used for the purpose for which it was originally acquired, must be reported to the FTA, and remains subject to continued compliance with regulatory requirements.

Assets owned, controlled or managed by UTA outside of any federal funding may also be encumbered by contractual provisions related to transfer or disposition.

An open issue is whether or not any consideration will be due, and to whom, should UTA, as the legal owner of the assets in question, be required in any transition to state entity status. This could become an issue of some financial and legal consequence.

Considerations:

- The risk of losing satisfactory continuing control of transit assets is assessed as low, assuming that the existing legal, financial, technical, and management capacity represented by the staff's accumulated knowledge and expertise currently resident within UTA is preserved.
- In consultation with the Office of the Attorney General, the identification of any constitutional or statutory provisions that may impede the disposition or transfer of assets from UTA to a potential successor entity exist would be prudent. This analysis could also assess the possibility that consideration may be due to UTA or the local taxing jurisdictions for any transitioned assets, whether or not acquired with FTA grant funding assistance.

Issue 4: Service Changes and Fares (Title VI)

Providers of fixed-route transit services such as UTA must comply with federal rules mandating the analysis of service and fare changes to determine whether low-income and other protected populations could bear a disproportionate share of the impact of such changes. Any successor entity's governing body to UTA would be responsible for ensuring that these requirements are scrupulously observed. The consulting team assesses the risk of non-compliance as low, assuming that UTA's existing public transit and compliance expertise is retained in any future transition.

Discussion:

UTA's Trustees have the authority and responsibility to establish and change transit services and set fares for the various modes of public transportation UTA provides, subject to FTA's oversight of civil rights impacts on fares and services changes.

Title VI of the Civil Rights Act of 1964 requires that no person shall be excluded from participation in any program or activity receiving federal financial assistance on the basis of race, color or national origin. In the public transit context, the FTA has published guidelines for compliance with Title VI by its grant recipients in Circular C 4702.1B.

For providers of fixed-route transit services, such as UTA, there are specific requirements for the analysis of the equity of service and fare changes to determine whether low-income and other protected populations might bear a disproportionate share of the impact of such changes. The service equity analysis requirements apply to any "major" service change, while similar analysis is required on all fare changes, without regard to the amount, for low income and other protected populations.

Considerations:

- If the state assumes responsibility for public transit operations through UTA's transition to a state entity, the new entity's governing body would be responsible for ensuring that Title VI requirements are scrupulously observed.
- The risk of non-compliance with Title VI requirements is assessed as low, assuming that the existing legal, financial, technical, and management capacity represented by the staff's accumulated knowledge and expertise currently resident within UTA is preserved in any potential transition.

Issue 5: Other Compliance Obligations

The governing body and management of any successor to UTA will be accountable for ensuring compliance with many regulatory standards and requirements applicable to FTA recipients and other federal support funding. FTA requires formal compliance reviews every three years to assess compliance levels and direct corrective actions for any deficiencies observed in 21 specific performance areas. Repeated findings of deficiency could negatively impact grant award eligibility. No significant compliance impacts attributable to the potential UTA transition are anticipated, assuming that knowledgeable UTA program experts are retained in any successor entity.

Discussion:

A multitude of regulatory standards and requirements apply to transit properties receiving FTA and other federal assistance. The FTA's Comprehensive Review Guide for the Triennial and State Management Reviews summarize the basic requirements with which any grant recipient must comply. Twenty-one specific areas are covered in these compliance reviews:

- Legal
- Financial Management and Capacity
- Technical Capacity Award Management
- Technical Capacity Program Management
- Technical Capacity Project Management
- Transit Asset Management
- Satisfactory Continuing Control
- Maintenance
- Procurement
- Disadvantaged Business Enterprise
- Title VI
- Americans with Disabilities Act General
- Americans with Disabilities Act Complementary Paratransit
- Equal Employment Opportunity
- School Bus
- Charter Bus
- Drug-Free Workplace Act
- Drug and Alcohol Program
- Section 5307 Program Requirements
- Section 5310 Program Requirements
- Section 5311 Program Requirements.

Compliance with these requirements demonstrates that the FTA grant recipient has the legal, financial, and technical capacity to manage and operate a public transit entity in a safe and compliant fashion. A successor agency would need to demonstrate competence in the areas listed above to assure continued federal financial support.

Based on conversations with members of the FTA Region 8 Office and UTA's generally solid record of positive Triennial Review results, the current staff of the UTA is held in high regard and has the requisite experience and expertise to manage a large public transit agency in compliance with applicable federal rules and standards.

Reference links to key FTA compliance-related documents include:

Comprehensive Review Guide

Procurement System Review Guide

Financial Management Oversight Review.

Considerations:

- The most recent Triennial Review found deficiencies in UTA's continuing control of assets. These deficiencies included incomplete asset records, a missed biennial physical inventory, and the lack of a written set of control procedures to ensure the completeness and accuracy of asset records. UTA has fully addressed all of these deficiencies.
- Over time, repeated instances of deficiency findings in the Triennial Review could impact grant award eligibility.
- No significant impacts attributable to the potential UTA transition are anticipated, assuming that knowledgeable UTA program experts are retained in any successor entity.

Governance & Organizational Issues

Issue 1: Future Organizational Model

Multiple potential organizational models for public transit service delivery, and the state's involvement therein, have been explored in recent years. The work of the 2017 Transportation and Governance Funding Task Force offered three alternatives, though none were adopted. If the legislature determines that a transition of UTA to the state is in the public interest, a clearly articulated set of transition policy objectives, desired outcomes, accountabilities and success metrics would inform decisions regarding the new entity's future organizational placement and design.

Discussion:

As described in Appendix A to this report, various organizational alternatives for a future transit service delivery model for the State of Utah have been proposed and assessed in recent years. The most notable of these are those developed and reported by the Governance and Transit Working Group of the 2017 Transportation Governance and Funding Task Force. The following three organizational options emerged from the Working Group's deliberations:

- The full consolidation of UTA's functions into UDOT, with the state owning the transit infrastructure, new capital development to be performed by UDOT, and UTA becoming a division of the Transportation Department (Model A)
- Creation of a multi-modal DOT with the state owning the transit infrastructure, new transit capital development to be performed by UDOT, and transit operations and maintenance assigned to UTA (Model B)
- A variation on the multi-modal DOT concept with UTA retaining ownership of the existing transit infrastructure, new transit capital development funded with state funds to be performed by UDOT, with the option to contract certain capital development services to UTA through interlocal agreement; current transit operations and maintenance to be performed by UTA and operations and maintenance of new transit capacity done by the state under contract with UTA or independent transit providers (Model C).

In all three of these models, the Working Group envisioned the possibility of a new, state-imposed sales tax in eight counties or other state funding to support public transit.

The 2017 task force report did not directly address UTA's legal entity status, though its language makes clear that it was considered at that time to be an entity independent of the State of Utah. Other limited purpose districts created under the same title of the Utah Code as UTA include Cemetery Maintenance Districts, Drainage Districts, Fire Protection Districts, Irrigation Districts, Mosquito Abatement Districts, Public Infrastructure Districts, Water Conservancy Districts, and others.

The manner of selecting these districts' governing boards varies widely, including elected boards, boards appointed by the local governing bodies, boards appointed by local courts, and boards appointed by the Governor upon nomination by local governing bodies. Furthermore, the method of selecting local district board members can vary within district type. For instance, of approximately 25 Water Conservancy Districts in the state, five have Board of Trustees appointed by the Governor from nominees submitted by local officials. All five of these districts have service boundaries that span multiple counties, much like UTA.

Similarly, the state's system of colleges and universities are governed under a board structure with members appointed by the Governor from a list of nominees and subject to removal by the Governor. Like UTA, these entities are considered discrete component units of the state for financial reporting purposes and operate independently of the executive branch.

These examples all suggest that the legislature, when considering the possible transition of UTA to a state entity, has a range of structural options available to choose from and that the choice from among the options previously explored to date - or those that might yet emerge, if any - will hinge on the public transportation goals it seeks to achieve.

Considerations:

- Should the legislature elect to proceed with a transition of UTA to the state, achieving consensus around a clearly articulated set of transition policy objectives, expected outcomes, accountabilities and success metrics will help to inform decisions regarding the new entity's organizational design, structural placement, responsibilities and authorities, and legal status.
- There is no significant direct cost for clarifying the legislature's intent regarding UTA's current legal entity status. However, the consequential cost impacts of the ultimate decision regarding the structure and placement of any transitioned UTA could range from negligible if the status quo is maintained, to vast if the UTA is transitioned into a fully integrated state agency and the state assumes full responsibility for the outstanding debt obligations.

Issue 2: Local Government Participation

Because the funding of UTA's capital and operating costs relies on sales taxes levied by the participating local governments, those entities have been actively engaged in public transit-related decision making. Any future loss of substantive input into a successor entity's service planning and funding decisions could raise political tensions if local officials perceive that their ability to influence the use of local tax dollars is diminished.

Discussion:

Because the financial model funding UTA operations, maintenance, and debt service is supported in significant measure by local sales taxes approved by voters or enacted by local governing bodies, there is an expectation that those local entities have meaningful input into the transit agency's decision-making processes. UTA's current organizational structure and governance model enables significant input and participation in transit service planning and delivery.

- The members of the UTA Board of Trustees are appointed by the Governor to represent the interests of specified geographic areas within UTA's service area.
- A nine-member Advisory Council comprising Mayors and City Council members is in place to provide local-level input into UTA's service planning and capital development programs, recommends transit-oriented development projects, and reviews and recommends the capital budget.
- UTA has a defined, multi-phased service planning and implementation process that incorporates multiple local stakeholder touchpoints throughout.
- Two Metropolitan Planning Organizations (WFRC and MAG) are composed of local elected officials and representatives of both UTA and UDOT.

Considerations:

- The potential loss of substantive local government involvement and participation in public transit decision-making could raise political tensions if local officials feel that their ability to influence the use of local tax dollars they raise is diminished. Alternatively, the legislature could enact a state-level transit tax and assume full responsibility for its administration.
- The Local Advisory Council model provides a structure to directly involve local officials in an advisory capacity to UTA's governing body and could be workable in a transitioned organizational model.

Issue 3: Branding

Depending on the future organizational model for transit service delivery, a rebranding of the entity may be needed. The costs of such rebranding could prove to be substantial.

Discussion:

Senate Bill 136 included a provision, later repealed, to change the Utah Transit Authority's name to the Transit District of Utah. If a future transition necessitates a name change, the successor entity could incur significant costs to rebrand the transit agency and, perhaps, some of its sub-brands such as FrontRunner, TRAX, MAX, streetcars, and services. Costs associated with rebranding UTA under a new name would include design consulting services, marketing and advertising services, changes to the brand treatment of all busses, rail cars, other vehicles, bus shelters, rail stops, billboards, signage, marketing material, website, stationery and business cards, schedule leaflets, uniforms, and other costs.

Considerations:

- At the time of the proposed name change of the Utah Transit Authority to the Transit District of Utah, press accounts reported that rebranding costs estimates mentioned by individual UTA Trustees could be as much as $50 million or more. Those media accounts garnered negative public feedback as the rebranding was seen as a waste of public resources.
- No definitive study of the full costs of a rebranding campaign for a transitioned UTA has been developed to the project team's knowledge.

Issue 4: Shared Support Services

If UTA were to transition into the executive branch of state government, there could be an opportunity to consolidate the legacy "back office" administrative support functions and technologies – such as finance and accounting, purchasing, human resources and payroll, risk management, fleet management, information technology, facilities management, and others – to the state's shared services model. Such consolidation could reduce the overall administrative cost burden on the successor entity but involve significant upfront transition costs and personnel impacts.

Discussion:

UTA has a typical set of internal administrative support functions such as Finance, Human Resources, Purchasing, Fleet Maintenance, and Information Technology. These essential support activities are replicated within counterpart organizations of the State of Utah.

Many of the support functions are provided to state agencies through the various division of the Utah Department of Administrative Services, including Finance, Risk Management, Fleet Operations, Purchasing & General Services, and Facilities Construction & Management. Additionally, independent, cabinet-level departments provide Information Technology and Human Resources management support to state agencies, while budget development and administration is managed through the Governor's Office.

Based on interviews conducted during the data gathering stage of this assignment, the project team understands the following:

- The Executive Director of the Department of Administrative Services believes if the legislature determines UTA should become a state entity that, as a general rule, that entity should be served under the centralized support structure currently in place, with exceptions made only after a detailed review of UTA's processes and capabilities.
- The Fleet Operations Division of DAS does not operate equipment maintenance shops but relies on private service contractors. Maintenance of specialized transit vehicles and equipment would require new capabilities unlikely to be available in the private market and would likely maintain its specialized bus and rail maintenance capability. Maintenance of sedans and light trucks could potentially transition to Fleet Operations oversight. UDOT, for example, is responsible for the maintenance of its specialized fleet of heavy equipment.
- The state's Director of Risk Management, based on consultations with the state's insurance broker, believes that it would be imprudent to require UTA or its successor to be included within the state's Risk Fund and would seek to procure excess liability coverage outside of

the fund if UTA was to transition to the state. This is due to the nature of the risk exposure of public transit operations and the consequent impact on statewide Risk Fund premiums.

– The state's Director of Purchasing and General Services has direct responsibility and oversight for statewide purchasing, mail, print services, and surplus property disposal. The Purchasing and General Services Division has the authority to enter into agreements with other public agencies outside of the executive branch. Currently, it serves approximately 120 separate public entities with some level of purchasing support. The Division manages over 800 cooperative purchasing contracts used by state agencies, educational entities, and local governments, some of which are accessed by UTA. Within state government, selected agencies have been authorized some independence from the state's purchasing process, including:
    - The Office of the Attorney General for the engagement of outside legal services
    - The State Auditor for the engagement of accountants and auditors
    - UDOT for purchases directly related to the construction and maintenance of highways.

  If UTA were transitioned into the state government structure, they would be subject to the state's purchasing code. They would then require legislative authority to deviate from that code for specific, specialized procurement needs and could request some level of independence to ensure compliance with federal purchasing rules.

– The state's Department of Human Resources Management (DHRM) would be responsible for administering common human capital management processes and service delivery, including recruitment, classification and compensation, employee relations, and workforce planning. DHRM's support service delivery model is decentralized, with DHRM managers, analysts and staff detailed to state agencies to provide on-site support to agency managers and staff. The Executive Director of DHRM advised the project team that a transition of some of the current UTA human resources staff to DHRM would be needed to strengthen the department's ability to manage collective bargaining, labor relations, and the recruitment of specialized public transit personnel.

– Multiple system migrations or integration/interfacing of UTA technology systems to the state's technology platforms could be required for such services as finance, purchasing, human resources, payroll, fleet, and other functions.

– Additionally, UTA operates a transit police department within the Operations function, responsible for the provision of patrol and emergency service call responses onboard UTA trains, stations, and other facilities. UTA Police Officers and staff also conduct follow-up investigations, operate K-9 patrol/explosives detection support and enforce UTA fare policies.

Considerations:

– The extent of the impact on the delivery of internal support services will be a function of the future business model adopted for a transitioned UTA. If UTA were to transition to an executive branch agency of state government, UTA's administrative support services could be redundant of the state processes and systems and would likely migrate to the existing state systems, creating an opportunity to capture cost efficiencies and economies of scale. The successor entity could then seek specific exceptions or carve-outs from the legislature as necessary and appropriate for the operation of a large public transit service. On the other hand, if transitioned to a stand-alone, independent state entity, the existing support services could remain substantially intact.

- An independent professional assessment may help identify the unique transit administrative functions and requirements that would need to be retained, migrated, or modified by either the state or the successor entity. Such an assessment could require consulting expenditures in the range of $150,000 to $300,000 depending on the scope.
- Any upgrades, customizations, or replacements of existing state enterprise systems found necessary to support transit-related administrative needs could carry low to mid-seven-figure price tags depending on the future transit service business model ultimately selected.
- Any plan to rationalize UTA's shared support services model within the State of Utah enterprise will need to account for the treatment of employees who could be found redundant.
- Any transitioned UTA employees would need to be trained on unfamiliar state systems and processes.
- The organizational placement of the transit police function, either as an organic element of any successor transit entity or, potentially, as a specialized unit of the Utah Department of Public Safety, will warrant consideration and decision.
- If the legislature decides that UTA should transition to an independent state agency status, it is possible that the migration to the state's enterprise-wide support services, processes, and technologies would be either unnecessary or phased-in over time.

Issue 5: Operational Technology Migration

UTA has developed and deployed various specialized technical systems necessary for the safe, efficient and effective operation of public transit services. Among others, these include applications for route planning and scheduling, operator timekeeping, fare collection, ticket vending, radio systems, emergency operations communications, electronic signage, security cameras, remote telemetry, and others. These systems could be used in any state entity model without significant disruption, although the development of interfaces or integrations to the state's core enterprise systems would become necessary. The scope and scale of such integration requirements merit close analysis.

Discussion:

In addition to the technology supporting UTA's back-office administrative functions, multiple operational systems necessary for the operation of UTA's various transit services are required. These include such activities as route planning and scheduling, operator timekeeping, fare collection, ticket vending, radio systems, emergency operations communications, electronic signage, security cameras, remote telemetry, and others.

Most, if not all, of these systems can be migrated from the current organizational structure to either an independent state entity or an executive branch state agency without significant impact. However, some may require the development of custom interfaces or integrations to the state's back-office administrative systems such as the general ledger, procurement, payroll, and fleet management applications if the successor entity were required to utilize those State of Utah enterprise systems.

Considerations:

- The risks and cost impacts on these specialized, transit-specific application systems would be dependent on the post-transition business model.
- If established as an independent state entity, using the legacy UTA administrative systems, the successor entity would expect to see minor impacts on operations and transition costs.
- Developing interfaces and converting historical data from the specialized operational systems to the state government's core enterprise systems could require $500,000 or more in contract services or state staff time.
- Costs for any necessary customization, upgrade, or replacement of state enterprise systems to support the legacy UTA operational technology would represent an additional cost.

Issue 6: Integration Program Management

UTA's transition into the state government structure, if pursued, would share many characteristics of a large-scale business merger, necessitating detailed analysis, careful planning, and a structured approach to the integration of technologies, processes, and people. Depending on the transition program's scope, a multi-year integration effort may be required, involving state employees from all involved agencies and, potentially, expert consulting support.

Discussion:

UTA's prospective transition from an independent local district to a state agency can be conceptualized as a business merger. Such mergers require thorough due diligence and a well-executed strategy and process to effectively integrate the legacy entity's people, processes, and technologies to those of the successor entity.

A successful transition to a reconfigured public transit service model, if pursued by state policymakers, would first require the clear articulation of the legislature's policy objectives and the intended to-be organizational placement and structure of the successor public transit service agency. Once the future vision for the state's provision of public transportation and transit services is established and enacted by the legislature, a formalized structure for the management of the transition and subsequent organizational integration could be needed to establish accountability and ensure the realization of the desired outcomes. This could include:

- Establishment and resourcing of a formal Integration Program Management Office (PMO) to oversee, coordinate, monitor and regularly report on transition project status, issues and risks
- Creation of cross-functional integration teams of subject-matter experts around each specific transition opportunity and challenge
- Definition of a common methodology and approach to the integration analysis and development of work plans for each integration issue
- Execution of a robust stakeholder engagement, communication and change management program within the overall methodology.

Considerations:

- The challenges to be addressed in large scale organizational change cited in the business literature often cite some combination or version of the following:
  - Lack of a compelling case for change
  - Inadequate senior alignment and engagement of senior leaders
  - Insufficient engagement of the parties most impacted by the change
  - Inattention to the importance of organizational culture
  - Poor progress measurement, monitoring and reporting
  - Failure to establish and sustain momentum
  - Underinvestment in the development of people.

  10 Reasons why organizational change fails
- A multi-year integration program management process to fully integrate UTA into the state government structure could involve completing an initial integration program assessment to define the transitioned entity's common operating model and develop a detailed transition program plan. Based on consultations with specialists in post-merger integration challenges in the commercial sector, these assessment and planning efforts can be expected to involve $150,000 – $200,000 in professional fees if performed by outside consultants.
- Contingent on the results of the transition planning effort described above, the creation and operating a UTA Transition PMO comprised of consultants, UTA, and State of Utah staff could result in consulting fees of $2 – $3 million, or more, in addition to the costs of state personnel assigned to support the integration project.
- The need for integration program management efforts of this scope and scale would be substantially reduced or eliminated if UTA were to transition intact to an independent entity status.

Appendix A: Historical Context

The following information summarizes significant events leading to the legislature's decision to pursue UTA governance reforms and those reforms' current status.

2014 Audit Report

In 2014, a Performance Audit of the Utah Transit Authority, completed by the Utah Legislative Auditor General, included among several findings were the following:

- UTA can improve its processes and legal documentation.
- Better controls and increased oversight will improve the Transit-Oriented Development (TOD) process.
- UTA executive compensation includes large bonuses and special benefits.
- UTA compensation is higher than UDOT or the Salt Lake City Department of Airports.
- UTA did not report all compensation information to the State of Utah's transparency website.
- Rail upkeep costs are significant and underfunded.
- Bus service has suffered due to financial constraints.

2017 Federal Non-Prosecution Agreement

The 2014 performance audit report led to a federal public corruption investigation, resignations of several UTA Board members, and a series of internal reform efforts. Issues investigated included controls over federal funds, Transit-Oriented Development (TOD) projects, ethical standards, and executive bonuses dating as far back as 2008.

UTA and the U.S. Attorney agreed to a three-year non-prosecution agreement that required the agency's continued cooperation, the collaboration of UTA executives in ongoing investigations, and the reporting of any criminal misconduct by agency personnel and the hiring of an independent monitor. The monitorship is ongoing.

In announcing the signing of the non-prosecution agreement, UTA leaders outlined a series of reforms in response to the 2014 audit report, including:

- Hiring a new Grants Manager and reforming policies and procedures
- Development of a new policy for the review, approval, and management of TOD projects
- Separation of TOD management from the General Counsel's Office for proper checks and balances
- Stricter review of TOD projects by the Internal Auditor and a third-party reviewer
- Tighter conflict-of-interest policy and disclosure for UTA executives and Trustees
- Revised process for hiring lobbyists
- General Counsel and Internal Auditor to perform an annual, independent review of conflict disclosures

- Board-led transparency initiative
- Elimination of bonus programs for executives
- Conduct of an independent total compensation study
- Revisions to compensation policies and procedures
- Set executive salary benchmarks to 10% below the market median
- Salary benchmarks to be based on averages of transit agencies, nonprofit organizations, and government agencies.

2017 Transportation Governance and Funding Task Force

Senate Bill 174, Public Transit and Transportation, passed in the 2017 General Legislative Session and created a 16-member legislative task force to "review, evaluate, study, prepare a report, and make recommendations on transportation-related topics …"

The state's Office of Legislative Research and General Counsel (OLRGC) supported the task force and issued a report based on the work of three working groups:

- Funding
- Economic Development, Land Use, Rural Issues and Active Transportation
- Governance and Transit.

The work of the Governance and Transit Working Group has the most direct relevance to this report. That group, chaired by Senator Harper, was charged with identifying options for a state role in governance and the funding of public transit services. The working group developed three alternative governance models for coordinated transit and transportation service delivery:

- **Model A** envisioned a **fully multimodal UDOT**, with the state owning the transit infrastructure, UDOT would perform the development of new transit capital programs, and UTA would become a division within UDOT. The performance attributes identified for this transit service model included:
  - Integrated and multimodal decision making
  - Optimization of the application of limited public dollars through operational efficiencies in certain common functions (e.g., engineering provided under a single entity), improved integration across transportation modes with other functions retained under other entities, and project prioritization across all modes managed within a single entity
  - Strengthened oversight of various modal entities, with the state responsible for planning, program, construction, operations and service delivery across modes, but potentially less likely to encourage local government investment and planning and service delivery
  - Partnerships with local entities for shared investment in success and requiring the state to take some local option funding.
- **Model B** defined a ***multimodal UDOT*** with state ownership of the transit infrastructure and new capital development for transit performed by UDOT. Transit operations, including those of UTA, would be managed under contracts with independent transit providers. The performance attributes identified for this model were similar to those envisioned for Model A as follows:
  - Integrated and multimodal decision making, encouraging an intermodal perspective throughout all phases of a project, from concept development through construction and

operational oversight defined through contractual relationships between the state and multiple transit providers
  - Optimization of the application of limited public dollars through operational efficiencies in certain common functions (e.g., engineering provided under a single entity), improved integration across transportation modes with other functions retained under other entities, and project prioritization across all modes managed within a single entity
  - The state would be responsible for planning, programming, and construction across all modes, with the level of state oversight of operations and maintenance performed by service providers established by contractual terms.
  - Partnerships with local entities for shared investment in success, including retaining local option funds at the local level, state project prioritization structured to incentivize smart land use by local entities and/or public-private partners, and increased engagement by counties/cities through the development of service plans.

- **Model C** described an ***alternative variant of a multimodal UDOT*** with ownership of the existing transit infrastructure retained by UTA. New transit capital development would be funded and performed by UDOT, with an option to contract with UTA for certain capital development services provided through an interlocal agreement. UTA would continue to operate current transit services; however, new state-funded transit projects would be operated by the state, potentially under contract with UTA or other independent providers. The performance attributes identified for this service included:
  - Integrated and multimodal decision making processes to encourage an intermodal perspective throughout all phases of a project, from concept development through construction
  - Optimization of the application of limited public dollars by leveraging efficiencies within certain functions (e.g., engineering functions provided through a mechanism that is most effective for the specific project) and improved integration across modes with state funds prioritized across modes by a single entity
  - State responsibility for the oversight of various modal entities to ensure appropriate accountability, and efficiency for all projects using state funds, either by delivering the project itself or by entering into an interlocal agreement for all or a portion of project delivery
  - Partnerships with local entities for shared investment in success, with local option funds retained at the local level and coordinated with state and regional investments.

The table on the following page compares the three governance models considered by the Governance and Transit Working Group and included in the Task Force Report. None of the three models addressed in the report were adopted.

2017 Transportation Governance and Funding Task Force: Comparison of Governance Models Considered

Characteristics & Considerations	Model A Fully Multimodal UDOT	Model B Multimodal UDOT	Model C Multimodal UDOT (alternative)
Ownership of existing transit infrastructure			UTA
Ownership of new, state-funded transit infrastructure			
Operation and maintenance of the current transit system		UTA	UTA
Operation and maintenance of new, state-funded transit system		UTA	UTA
State of Good Repair on existing infrastructure			UTA
Delivery of new, state-funded transit capital projects		UTA *	UTA *
Current local-option sales taxes		UTA	UTA
Possible new, state-imposed ¼ cent sales tax in eight counties, or other state-authorized funding			
FTA Funding for state-funded projects			UTA

*State has decision authority

Source: Transportation Governance and Funding Task Force Report, Presentation to the Transportation Interim Committee, 11/15/2017, Utah State Office of Legislative Research and General Counsel

2018 Transportation Governance Amendments (S.B. 136)

This legislation, sponsored by Senator Wayne Harper and Representative Mike Schultz, included multiple provisions to modify UTA governance. Some of the changes included the following:

- Replacement of the existing 16-member Board of Trustees to three full-time, paid members, each representing three separate regions of the UTA service area
- Appointment of the UTA Trustees to be provided by the Governor, based on nominees supplied by local governments within each of the three regions
- Requirement that the Office of the Attorney General serve as UTA's legal counsel
- Creation a local Advisory Board with defined responsibilities including:
- Setting the compensation of the Board of Trustees
- Reviewing, approving, and recommending final adoption of transit service plans
- Reviewing, approving, and recommending final adoption and funding of project development plans for all new capital development projects
- Reviewing, approving, and recommending final adoption of transit-oriented development plans
- Engaging annually with the safety and security team to ensure coordination with local municipalities and counties
- Assisting with coordinated mobility and constituent services
- Representing and advocating the concerns of citizens to the Board of Trustees
- Performing other duties such as the provision of consultative and advisory support to the Board of Trustees in the development and approval of board policies, strategic planning, the creation and pursuit of funding for capital and service initiatives to meet anticipated growth, internal audits, and the investment of funds
- Requirement of the Board of Trustees to review and approve any contract or expense exceeding $200,000 and changes orders exceeding 15% of the contract amount or $200,000
- Completion of a feasibility study of moving UTA employees into the Statewide Utah Retirement System
- Requirement that all UTA bond issues receive the approval of the State Bonding Commission
- Completion of a study, in collaboration with UDOT, to evaluate the feasibility of UTA's strategic transition into a state agency (this project).

2019 Transportation Governance and Funding (S.B. 72)

As it relates to the UTA transition feasibility study, the legislature's 2019 session saw some relatively minor amendments concerning UTA governance matters. This bill:

- Modified the procedure for the appointment of UTA Trustees
- Repealed an earlier provision that would have renamed UTA as the Transit District of Utah
- Renamed the Local Advisory Board as a Local Advisory Council
- Capped the compensation of UTA Trustees at an annual salary of $150,000, plus retirement and standard benefits

- Removed the requirement for a yearly report to the Transportation Interim Committee on the transition feasibility study's progress.

2019 Report of the State Auditor on UTA State Entity Status

In October 2019, State Auditor John Dougall, along with Director John Reidhead, Department of Administrative Services Division of Finance, appeared before the Transportation Interim Committee to present findings and recommendations regarding UTA's legal entity status. The State Auditor expressed his opinion that, although the legislative history shows that policymakers intended UTA to be a local district entity, it is now, in fact, a state entity equivalent to other independent state agencies because:

- A state entity is defined as a legally separate entity included in the state's financial statements and/or a pseudo-independent entity over which the state exercises significant or controlling interest
- The Governor now appoints the UTA's Board of Trustees, who serve at the Governor's pleasure.
- The Governor selects the chairperson of the Board of Trustees
- The Utah Attorney General provides UTA's legal representation, and only state entities are entitled to such representation

The State Auditor cited examples of several independent state entities whose financial statements appear in the state's annual financial report:

- Utah Communications Authority
- Heber Valley Historic Railroad Authority
- School and Institutional Trust Fund Office
- School and Institutional Trust Lands Administration
- Utah Beef Council
- Utah Dairy Commission
- Utah Retirement Systems
- Utah Energy Infrastructure Authority
- Utah State Railroad Museum Authority
- Military Installation Development Authority
- Utah Housing Corporation
- Utah State Fair Corporation
- Utah Capital Investment Corporation

UTA's assigned legal counsel advised that UTA disagrees with the State Auditor's assessment and finds no ambiguity in its legal status as a local district. The legal advisor's position is based on the fact that UTA was created under Title 17B of the Utah Code and that the language in S.B. 136 requires a study of the feasibility of transitioning UTA to a state entity from a non-state entity status. UTA also contends that the legislature never intended for the state to have any responsibility for its debt.

Based on the Division of Finance's analysis, for the fiscal year 2019 State of Utah Comprehensive Annual Financial Report (CAFR), UTA was treated as a "Discretely Presented Component Unit" of the State of Utah, of which there are "Major" and "Non-major" units. These component units are legally separate entities for which the state is financially accountable.

As described in the CAFR, these units "issue their own separately audited financial statements as special-purpose governments engaged only in business-type activities." It further states that "the determination that a discrete component unit is major is based on the nature and significance of its relationship to the primary government."[1]

UTA is considered a major component unit of the state along with:

- The Public Employee Health Program
- The University of Utah
- Utah State University.

Although the State Auditor and UTA disagree that UTA is now a state entity by virtue of the governance changes enacted in S.B. 136, there was a broad consensus that:

- The practical effect of the governance change is the need to include UTA's financial statements in the state's CAFR as a component unit to meet current accounting standards.
- The inclusion of UTA's financial statements in the state CAFR does not create an obligation of the State of Utah to assume responsibility for UTA's debt.
- "Clean-up" legislation may be needed to definitively address the current legal entity status of UTA and the legislature's intent in that regard.

To date, no action has been taken to formally clarify the state legislature's intent regarding the legal entity status of UTA. In June 2020, UTA requested the State Auditor approve UTA's independent auditor selection. After reviewing the audit firm's skills and capabilities, the State Auditor approved UTA's request.

Current Status of UTA Reform Efforts

Based on the information provided by participants and stakeholders and the review of the documents cited above, numerous changes have been adopted to address the findings of the 2014 Performance Audit and subsequent investigations. Specifically:

- The Board of Trustees governance structure has been changed in terms of both size (from 16 to 3) and presence (from volunteer to full-time).
- The gubernatorial appointment and removal process for the UTA Board of Trustees and the empowerment of a Local Advisory Council to represent the interests of the local populations served by UTA have enhanced the accountability for UTA's performance to both the state and the local governments in its service area.
- The Trustees appoint the Executive Director, who has the delegated authority to appoint all UTA chief-level staff, including those listed below:
    - Chief Operating Officer
    - Chief Communications & Marketing Officer
    - Chief Finance Officer
    - Chief People Officer
    - Chief Service Development Officer.
- More rigorous controls over expenditures, travel, and compensation have been enacted.
- Debt issuance is subject to additional oversight.
- The Office of the Utah Attorney General provides legal representation for the UTA.

[1] 2019 CAFR footnote 1.A