

1 **HIGHER EDUCATION SAVINGS INCENTIVE**

2 **PROGRAM AMENDMENTS**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Kevin S. Garn**

6 Senate Sponsor: Gregory S. Bell

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**LONG TITLE**

8 **General Description:**

9 This bill modifies provisions relating to the Utah Educational Savings Plan Trust.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ deletes provisions making a beneficiary of a vested account eligible for resident  
13 status for tuition purposes;
- 14 ▶ deletes restrictions regarding when the payment of benefits under an account  
15 agreement must begin;
- 16 ▶ provides that money may be transferred from the endowment fund to the  
17 administrative fund as approved by the board of directors of the Utah Educational  
18 Savings Plan Trust;
- 19 ▶ expands the uses of money in the endowment fund;
- 20 ▶ clarifies provisions regarding:
- 21 • the permitted uses of account funds; and
- 22 • the ownership of funds in an account;
- 23 ▶ modifies financial reporting requirements applicable to the Utah Educational  
24 Savings Plan Trust;
- 25 ▶ classifies certain records of the Utah Educational Savings Plan Trust as protected  
26 records under Title 63, Chapter 2, Government Records Access and Management  
27



28 Act; and  
29       ▶ makes technical amendments.

30 **Monies Appropriated in this Bill:**

31       None

32 **Other Special Clauses:**

33       None

34 **Utah Code Sections Affected:**

35 AMENDS:

- 36       **53B-8a-101**, as last amended by Laws of Utah 2005, Chapter 109
- 37       **53B-8a-102**, as last amended by Laws of Utah 2007, Chapter 100
- 38       **53B-8a-106**, as last amended by Laws of Utah 2007, Chapter 100
- 39       **53B-8a-107**, as last amended by Laws of Utah 2007, Chapter 100
- 40       **53B-8a-108**, as last amended by Laws of Utah 2007, Chapters 100 and 306
- 41       **53B-8a-109**, as last amended by Laws of Utah 2007, Chapter 100
- 42       **53B-8a-111**, as last amended by Laws of Utah 2007, Chapter 100
- 43       **63-2-304**, as last amended by Laws of Utah 2007, Chapters 66 and 352



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

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

47       **53B-8a-101. Purpose.**

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

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

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

58       (b) The Legislature further finds that [~~the creation of the means of encouragement for~~

59 citizens to invest in such] a program [~~represents the carrying out of~~] described in Subsection  
 60 (2)(a) serves a vital and valid public purpose.

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

64 (b) It may also be necessary to establish and create an endowment fund, which may be  
 65 funded with public funds, among other sources, the income from which may be made available  
 66 to account owners to enhance or encourage their savings invested for future higher education  
 67 costs or for use in scholarship or other college savings incentive programs.

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

69 **53B-8a-102. Definitions.**

70 As used in this chapter:

71 (1) "Account agreement" means an agreement between an account owner and the Utah  
 72 Educational Savings Plan Trust entered into under this chapter.

73 (2) "Account owner" means a person, estate, or trust, if that person, estate, or trust has  
 74 entered into an account agreement under this chapter [~~for the advance payment of~~] to save for  
 75 the higher education costs on behalf of a beneficiary.

76 (3) "Administrative fund" means the moneys used to administer the Utah Educational  
 77 Savings Plan Trust.

78 (4) "Beneficiary" means the individual designated in an account agreement to benefit  
 79 from [~~payments~~] the amount saved for higher education costs [~~at an institution of higher~~  
 80 ~~education~~].

81 [~~(5) "Benefits" means the payment of higher education costs on behalf of a beneficiary~~  
 82 ~~by the Utah Educational Savings Plan Trust during the beneficiary's attendance at an institution~~  
 83 ~~of higher education.~~]

84 [~~(6)~~] (5) "Board" means the board of directors of the Utah Educational Savings Plan  
 85 Trust which is the state Board of Regents acting in its capacity as the Utah Higher Education  
 86 Assistance Authority under Title 53B, Chapter 12.

87 [~~(7)~~] (6) "Endowment fund" means the endowment fund established under Section  
 88 53B-8a-107 which is held as a separate fund within the Utah Educational Savings Plan Trust.

89 [~~(8)~~] (7) "Higher education costs" means qualified higher education expenses as

90 defined in Section 529(e)(3), Internal Revenue Code.

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

95 ~~[(10) (8) "Program administrator" means the administrator of the Utah Educational~~  
96 ~~Savings Plan Trust appointed by the board to administer and manage the Utah Educational~~  
97 ~~Savings Plan Trust.~~

98 ~~[(11) (9) "Program fund" means the program fund created under Section 53B-8a-107,~~  
99 ~~which is held as a separate fund within the Utah Educational Savings Plan Trust.~~

100 ~~[(12) (10) "Qualified investment" means an amount invested in accordance with an~~  
101 ~~account agreement established under this chapter.~~

102 ~~[(13) (11) "Tuition and fees" means the quarterly or semester charges imposed to~~  
103 ~~attend an institution of higher education and required as a condition of enrollment.~~

104 ~~[(14) (12) "Utah Educational Savings Plan Trust" means the Utah Educational Savings~~  
105 ~~Plan Trust created under Section 53B-8a-103.~~

106 ~~[(15) "Vested account" means an account agreement which has been in full force and~~  
107 ~~effect during eight continuous years of residency of the beneficiary in the state while~~  
108 ~~participating in the Utah Educational Savings Plan Trust.]~~

109 Section 3. Section **53B-8a-106** is amended to read:

110 **53B-8a-106. Account agreements.**

111 The Utah Educational Savings Plan Trust may enter into account agreements with  
112 account owners on behalf of beneficiaries under the following terms and agreements:

113 (1) (a) An account agreement may require an account owner to agree to invest a  
114 specific amount of money in the Utah Educational Savings Plan Trust for a specific period of  
115 time for the benefit of a specific beneficiary, not to exceed an amount determined by the  
116 program administrator.

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

119 (c) An account owner may make additional optional payments as long as the total  
120 payments for a specific beneficiary do not exceed the total estimated higher education costs as

121 determined by the program administrator.

122 (d) Subject to Subsection (1)(f), the maximum amount of a qualified investment that a  
123 corporation that is an account owner may subtract from unadjusted income for a taxable year in  
124 accordance with Title 59, Chapter 7, Corporate Franchise and Income Taxes, is \$1,560 for each  
125 individual beneficiary for the taxable year beginning on or after January 1, 2006, but beginning  
126 on or before December 31, 2006.

127 (e) Subject to Subsection (1)(f), the maximum amount of a qualified investment that  
128 may be subtracted from federal taxable income of a resident or nonresident individual for a  
129 taxable year in accordance with Section 59-10-114, a resident or nonresident estate or trust for  
130 a taxable year in accordance with Section 59-10-202, or used as the basis for claiming a tax  
131 credit for a taxable year by a resident or nonresident individual in accordance with Section  
132 59-10-1206.1, is:

133 (i) for a resident or nonresident estate or trust that is an account owner, \$1,560 for each  
134 individual beneficiary for the taxable year beginning on or after January 1, 2006, but beginning  
135 on or before December 31, 2006;

136 (ii) for a resident or nonresident individual that is an account owner, other than a  
137 husband and wife who are account owners and file a single return jointly, \$1,560 for each  
138 individual beneficiary for the taxable year beginning on or after January 1, 2006, but beginning  
139 on or before December 31, 2006; or

140 (iii) for a husband and wife who are account owners and file a single return jointly,  
141 \$3,120 for each individual beneficiary:

142 (A) for the taxable year beginning on or after January 1, 2006, but beginning on or  
143 before December 31, 2006; and

144 (B) regardless of whether the Utah Educational Savings Plan Trust has entered into:

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

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

147 (f) (i) For taxable years beginning on or after January 1, 2007, the program  
148 administrator shall increase or decrease the maximum amount of a qualified investment  
149 described in Subsections (1)(d) and (1)(e)(i) and (ii), by a percentage equal to the percentage  
150 difference between the consumer price index for the preceding calendar year and the consumer  
151 price index for the calendar year 2005.

152 (ii) After making an increase or decrease required by Subsection (1)(f)(i), the program  
153 administrator shall:

154 (A) round the maximum amount of the qualified investments described in Subsections  
155 (1)(d) and (1)(e)(i) and (ii) increased or decreased under Subsection (1)(f)(i) to the nearest ten  
156 dollar increment; and

157 (B) increase or decrease the maximum amount of the qualified investment described in  
158 Subsection (1)(e)(iii) so that the maximum amount of the qualified investment described in  
159 Subsection (1)(e)(iii) is equal to the product of:

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

162 (II) two.

163 (iii) For purposes of Subsections (1)(f)(i) and (ii), the program administrator shall  
164 calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue  
165 Code.

166 (2) (a) [(†)] Beneficiaries designated in account agreements must be designated after  
167 birth and before age 19 for an account owner to:

168 [(A)] (i) subtract a qualified investment from income under:

169 [(†)] (A) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

170 [(†)] (B) Section 59-10-114; or

171 [(†)] (C) Section 59-10-202; or

172 [(B)] (ii) use a qualified investment as the basis for claiming a tax credit in accordance  
173 with Section 59-10-1206.1.

174 [~~(ii) If the beneficiary is designated after birth and before age 19, the payment of~~  
175 ~~benefits provided under the account agreement must begin not later than the beneficiary's 27th~~  
176 ~~birthday.]~~

177 (b) [(†)] Account owners may designate beneficiaries age 19 or older, but investments  
178 for those beneficiaries are not eligible for subtraction from federal taxable income.

179 [~~(ii) If a beneficiary age 19 or older is designated, the payment of benefits provided~~  
180 ~~under the account agreement must begin not later than ten years from the account agreement~~  
181 ~~date.]~~

182 (3) Each account agreement shall state clearly that there are no guarantees regarding

183 moneys in the Utah Educational Savings Plan Trust as to the return of principal and that losses  
184 could occur.

185 (4) Each account agreement shall provide that:

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

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

189 (c) no account owner may borrow from the Utah Educational Savings Plan Trust.

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

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

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

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

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

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

204 (7) Account agreements may be freely amended throughout their terms in order to  
205 enable account owners to increase or decrease the level of participation, change the designation  
206 of beneficiaries, and carry out similar matters as authorized by rule.

207 (8) Each account agreement shall provide that:

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

210 (b) the program administrator may amend the agreement unilaterally and retroactively,  
211 if necessary, to maintain the Utah Educational Savings Plan Trust as a qualified tuition  
212 program under Section 529 Internal Revenue Code.

213 Section 4. Section **53B-8a-107** is amended to read:

214           **53B-8a-107. Program, endowment, and administrative funds -- Investment and**  
215 **payments from funds.**

216           (1) ~~[(a)]~~ The board shall segregate moneys received by the Utah Educational Savings  
217 Plan Trust into three funds, the program fund, ~~[the endowment fund, and]~~ the administrative  
218 fund, and the endowment fund.

219           ~~[(b) No more than two percentage points of the interest earned annually in the~~  
220 ~~endowment fund may be transferred to the administrative fund for the purpose of paying~~  
221 ~~operating costs associated with administering the Utah Educational Savings Plan Trust and as~~  
222 ~~required under Sections 53B-8a-103 through 53B-8a-105.]~~

223           ~~[(c)]~~ (2) Transfers may be made from the program fund to the administrative fund to  
224 pay operating costs:

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

227           ~~[(ii)]~~ (b) as included in the budget approved by the board of directors of the Utah  
228 Educational Savings Plan Trust.

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

232           (b) Moneys accrued by account owners in the program fund of the Utah Educational  
233 Savings Plan Trust may be used for:

234           (i) payments to any institution of higher education;

235           (ii) payments to the account owner or beneficiary;

236           (iii) payments to another 529 plan; or

237           (iv) other expenditures or transfers made in accordance with the account agreement.

238           ~~[(e)]~~ (4) (a) All moneys received by the Utah Educational Savings Plan Trust from the  
239 proceeds of gifts and other endowments for the purposes of the Utah Educational Savings Plan  
240 Trust shall be deposited as received into the endowment fund, which shall be promptly  
241 invested and accounted for separately.

242           ~~[(f)]~~ (b) Any gifts, grants, or donations made by any governmental unit or any person,  
243 firm, partnership, or corporation to the Utah Educational Savings Plan Trust for deposit to the  
244 endowment fund ~~[shall be]~~ is a grant, gift, or donation to the state for the accomplishment of a



245 valid public eleemosynary, charitable, and educational purpose and ~~[shall]~~ is not ~~[be]~~ included  
246 in the income of the donor for Utah tax purposes.

247 ~~[(2) (a) Through March 31, 2005, each account owner under an account agreement may~~  
248 ~~receive an interest in a portion, as determined by policy, of the investment income derived by~~  
249 ~~the endowment fund in any year during which funds are invested in the program fund on behalf~~  
250 ~~of the beneficiary, to be payable as provided in Subsection (2)(c).]~~

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

256 ~~[(c) (i) Except as provided in Subsection (2)(c)(ii), at the time any payments or~~  
257 ~~disbursements for higher education costs are made from the Utah Educational Savings Plan~~  
258 ~~Trust to any institution of higher education under an account agreement, the Utah Educational~~  
259 ~~Savings Plan Trust shall add to that payment from endowment fund income a pro rata portion~~  
260 ~~of the amount calculated pursuant to Subsection (2)(b), which shall be transferred directly to~~  
261 ~~the institution of higher education simultaneously with the payment made from the program~~  
262 ~~fund and shall be used for payment of the higher education costs of the beneficiary, but not to~~  
263 ~~exceed the amount which, in combination with the current payment due from the program~~  
264 ~~fund, equals the beneficiary's higher education costs for the current period of enrollment.]~~

265 ~~[(ii) Effective March 31, 2005, any interest income on the endowment fund accruing to~~  
266 ~~a beneficiary that has not been transferred to an institution of higher education pursuant to~~  
267 ~~Subsection (2)(c)(i) shall be transferred to the beneficiary's program fund account.]~~

268 ~~[(3) Beginning on April 1, 2005:]~~

269 ~~[(a) interest income on the]~~

270 (c) The endowment fund may be used to enhance the savings of low income account  
271 owners investing in the Utah Educational Savings Plan Trust, [as provided by rules of the  
272 board; and] for scholarships, or for other college savings incentive programs as approved by  
273 the board.

274 ~~[(b) the original principal in]~~

275 (d) Transfers may be made from the endowment fund ~~[may be transferred]~~ to the

276 administrative fund upon approval by the board.

277 ~~[(4)]~~ (e) Endowment fund earnings not accruing to a beneficiary under ~~[a participation]~~  
278 an account agreement or not transferred to the administrative fund shall be reinvested in the  
279 endowment fund.

280 ~~[(5) Moneys accrued by account owners in the program fund of the Utah Educational~~  
281 ~~Savings Plan Trust may be used for payments to any institution of higher education.]~~

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

285 Section 5. Section **53B-8a-108** is amended to read:

286 **53B-8a-108. Cancellation of agreements.**

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

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

290 (a) an administrative refund fee, which may be charged by the Utah Educational  
291 Savings Plan Trust, except as provided in Subsection (3); and

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

293 (3) An administration refund fee may not be levied by the Utah Educational Savings  
294 Plan Trust if the account agreement is cancelled due to:

295 (a) the death of the beneficiary; or

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

297 ~~[(4) The board shall make rules for the disposition of monies transferred to an account~~  
298 ~~pursuant to Subsection 53B-8a-107(2)(c)(ii) and the earnings on those monies when an account~~  
299 ~~agreement is cancelled.]~~

300 Section 6. Section **53B-8a-109** is amended to read:

301 **53B-8a-109. Repayment and ownership of payments and investment income --**

302 **Transfer of ownership rights.**

303 (1) (a) The account owner retains ownership of ~~[all payments made under]~~ funds in the  
304 account [agreement] until [utilized];

305 (i) funds are used to pay higher education costs for the beneficiary[.];

306 (ii) funds are otherwise disbursed;

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

308 (iv) the account is closed.

309 (b) ~~[All income derived from the investment of the payments made by the account~~

310 ~~owner] Funds in the account~~ shall be considered to be held in trust for the benefit of the

311 beneficiary.

312 ~~[(2) The institution of higher education shall obtain ownership of the payments made~~

313 ~~for the higher education costs paid to the institution at the time each payment is made to the~~

314 ~~institution.]~~

315 ~~[(3)]~~ (2) Any amounts that may be paid pursuant to the Utah Educational Savings Plan

316 Trust that are not listed in this section are owned by the Utah Educational Savings Plan Trust.

317 ~~[(4)]~~ (3) (a) An account owner may transfer ownership rights to another eligible

318 person.

319 (b) The transfer shall be affected and the property distributed in accordance with

320 administrative regulations promulgated by the board or the terms of the account agreement.

321 Section 7. Section **53B-8a-111** is amended to read:

322 **53B-8a-111. Annual audited financial report to governor, Legislature, and state**

323 **auditor.**

324 ~~[(1) The board shall submit an annual audited financial report, prepared in accordance~~

325 ~~with generally accepted accounting principles, on the operations of the Utah Educational~~

326 ~~Savings Plan Trust by November 1 to the governor, the Legislature, and the state auditor.]~~

327 ~~[(2) The annual audit shall be made either by the state auditor or by an independent~~

328 ~~certified public accountant designated by the state auditor and shall include direct and indirect~~

329 ~~costs attributable to the use of outside consultants, independent contractors, and any other~~

330 ~~persons who are not state employees.]~~

331 ~~[(3) The annual audit shall be supplemented by the following information prepared by~~

332 ~~the board:]~~

333 (1) The financial statements of the Utah Educational Savings Plan Trust as audited by

334 the state auditor or the state auditor's designee shall be included in the state's Comprehensive

335 Annual Financial Report.

336 (2) The board shall submit to the governor and the Legislature:

337 (a) upon request, any studies or evaluations ~~[prepared in the preceding year]~~ of the

338 Utah Educational Savings Plan Trust;

339 (b) upon request, a summary of the benefits provided by the Utah Educational Savings  
340 Plan Trust including the number of participants and beneficiaries in the Utah Educational  
341 Savings Plan Trust; and

342 (c) upon request, any other information which is relevant in order to make a full, fair,  
343 and effective disclosure of the operations of the Utah Educational Savings Plan Trust.

344 Section 8. Section **63-2-304** is amended to read:

345 **63-2-304. Protected records.**

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

347 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret  
348 has provided the governmental entity with the information specified in Section 63-2-308;

349 (2) commercial information or nonindividual financial information obtained from a  
350 person if:

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

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

356 (c) the person submitting the information has provided the governmental entity with  
357 the information specified in Section 63-2-308;

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

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

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

367 (6) records the disclosure of which would impair governmental procurement  
368 proceedings or give an unfair advantage to any person proposing to enter into a contract or

369 agreement with a governmental entity, except that this Subsection (6) does not restrict the right  
370 of a person to see bids submitted to or by a governmental entity after bidding has closed;

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

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

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

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

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

383 (e) the property under consideration for public acquisition is a single family residence  
384 and the governmental entity seeking to acquire the property has initiated negotiations to acquire  
385 the property as required under Section 78-34-4.5;

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

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

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

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

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

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

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

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

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

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

413 (11) records the disclosure of which would jeopardize the security of governmental  
414 property, governmental programs, or governmental recordkeeping systems from damage, theft,  
415 or other appropriation or use contrary to law or public policy;

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

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

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

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

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

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

434 (18) records of communications between a governmental entity and an attorney  
435 representing, retained, or employed by the governmental entity if the communications would be  
436 privileged as provided in Section 78-24-8;

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

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

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

443 (A) members of a legislative body;

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

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

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

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

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

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

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

460 (23) records concerning a governmental entity's strategy about collective bargaining or  
461 pending litigation;

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

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

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

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

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

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

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

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

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

492 (33) records that would reveal the contents of settlement negotiations but not including



493 final settlements or empirical data to the extent that they are not otherwise exempt from  
494 disclosure;

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

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

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

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

510 (a) the donor requests anonymity in writing;

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

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

518 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and  
519 73-18-13;

520 (39) a notification of workers' compensation insurance coverage described in Section  
521 34A-2-205;

522 (40) (a) the following records of an institution within the state system of higher  
523 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,

524 or received by or on behalf of faculty, staff, employees, or students of the institution:

525 (i) unpublished lecture notes;

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

527 (A) relating to research; and

528 (B) of:

529 (I) the institution within the state system of higher education defined in Section

530 53B-1-102; or

531 (II) a sponsor of sponsored research;

532 (iii) unpublished manuscripts;

533 (iv) creative works in process;

534 (v) scholarly correspondence; and

535 (vi) confidential information contained in research proposals;

536 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public

537 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

538 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

539 (41) (a) records in the custody or control of the Office of Legislative Auditor General

540 that would reveal the name of a particular legislator who requests a legislative audit prior to the

541 date that audit is completed and made public; and

542 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the

543 Office of the Legislative Auditor General is a public document unless the legislator asks that

544 the records in the custody or control of the Office of Legislative Auditor General that would

545 reveal the name of a particular legislator who requests a legislative audit be maintained as

546 protected records until the audit is completed and made public;

547 (42) records that provide detail as to the location of an explosive, including a map or

548 other document that indicates the location of:

549 (a) a production facility; or

550 (b) a magazine;

551 (43) information contained in the database described in Section 62A-3-311.1;

552 (44) information contained in the Management Information System and Licensing

553 Information System described in Title 62A, Chapter 4a, Child and Family Services;

554 (45) information regarding National Guard operations or activities in support of the

555 National Guard's federal mission;

556 (46) records provided by any pawn or secondhand business to a law enforcement  
557 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and  
558 Secondhand Merchandise Transaction Information Act;

559 (47) information regarding food security, risk, and vulnerability assessments performed  
560 by the Department of Agriculture and Food;

561 (48) except to the extent that the record is exempt from this chapter pursuant to Section  
562 63-2-106, records related to an emergency plan or program prepared or maintained by the  
563 Division of Homeland Security the disclosure of which would jeopardize:

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

565 (b) the security of:

566 (i) governmental property;

567 (ii) governmental programs; or

568 (iii) the property of a private person who provides the Division of Homeland Security  
569 information;

570 (49) records of the Department of Agriculture and Food relating to the National  
571 Animal Identification System or any other program that provides for the identification, tracing,  
572 or control of livestock diseases, including any program established under Title 4, Chapter 24,  
573 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and  
574 Quarantine;

575 (50) as provided in Section 26-39-109:

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

579 (b) information or records related to a complaint received by the Department of Health  
580 from an anonymous complainant regarding a child care program or residential child care; [~~and~~]

581 (51) unless otherwise classified as public under Section 63-2-301 and except as  
582 provided under Section 41-1a-116, an individual's home address, home telephone number, or  
583 personal mobile phone number, if:

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

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

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

589 (ii) the individual complying with the law, ordinance, rule, or order[-]; and

590 (52) (a) records of the Utah Educational Savings Plan Trust created under Section  
591 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

592 (b) proposals submitted to the Utah Educational Savings Plan Trust; and

593 (c) contracts entered into by the Utah Educational Savings Plan Trust and the related  
594 payments.

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**Legislative Review Note**

**as of 1-21-08 1:59 PM**

**Office of Legislative Research and General Counsel**

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**H.B. 321 - Higher Education Savings Incentive Program Amendments**

**Fiscal Note**

2008 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Provisions of this legislation may benefit some Utah Educational Savings Plan account holders.

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