

1 **UTAH EDUCATIONAL SAVINGS PLAN**
2 **AMENDMENTS**
3 2010 GENERAL SESSION
4 STATE OF UTAH

5 **Chief Sponsor: Wayne L. Niederhauser**
6 House Sponsor: Gregory H. Hughes

8 **LONG TITLE**

9 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ amends the governance and oversight authority of the State Board of Regents for
- 14 the Utah Educational Savings Plan;
- 15 ▶ modifies Utah Educational Savings Plan provisions, including:
 - 16 • clarifying the plan's name, powers, and duties;
 - 17 • beginning with the 2011 taxable year, eliminating a requirement to reduce the
 - 18 value of the Utah Educational Savings Plan tax credit or deduction when the
 - 19 Consumer Price Index decreases from one year to the next; and
 - 20 • exempting certain withdrawals from the add back provisions of a Utah state
 - 21 income tax credit or deduction previously claimed;
 - 22 ▶ defines terms; and
 - 23 ▶ makes technical changes.

24 **Monies Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 This bill provides an immediate effective date.

28 **Utah Code Sections Affected:**

29 AMENDS:

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

85 (b) It may also be necessary to establish and create an endowment fund, which may be

86 funded with public funds, among other sources, the income from which may be made
87 available to account owners to enhance or encourage their savings invested for future higher
88 education costs or for use in scholarship or other college savings incentive programs.

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

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

91 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

114 ~~Plan Trust.]~~

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

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

119 ~~[(11)]~~ (12) "Tuition and fees" means the quarterly or semester charges imposed to
120 attend an institution of higher education and required as a condition of enrollment.

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

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

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

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

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

129 (2) The plan:

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

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

133 (i) consistent with sound fiduciary principles; and

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

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

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

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

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

- 142 (i) contracts for goods and services; and
- 143 (ii) contracts to engage:
- 144 (A) personnel, including consultants, actuaries, managers, counsel, and auditors for
- 145 the purpose of rendering professional, managerial, and technical assistance and advice; and
- 146 (B) one or more investment advisors, registered under the Investment Advisers Act of
- 147 1940, with at least 5,000 advisory clients and at least \$1,000,000,000 under management, to
- 148 provide investment advice to the board with respect to the assets held in each account;
- 149 ~~[(e)]~~ (b) adopt a corporate seal and change and amend it from time to time;
- 150 ~~[(d)]~~ (c) invest moneys within the program fund:
- 151 (i) (A) in any investments that are determined by the board to be appropriate ~~[and are~~
- 152 ~~approved by the state treasurer]; or~~
- 153 (B) in mutual funds registered under the Investment Company Act of 1940, consistent
- 154 with the best interests of a designated beneficiary's higher education funding needs; and
- 155 (ii) that are in compliance with rules of the State Money Management Council
- 156 applicable to gift funds;
- 157 ~~[(e)]~~ (d) invest moneys within the endowment fund in any investments that are:
- 158 (i) determined by the board to be appropriate;
- 159 (ii) approved by the state treasurer; and
- 160 (iii) in compliance with rules of the State Money Management Council applicable to
- 161 gift funds;
- 162 ~~[(f)]~~ (e) enter into agreements with account owners, any institution of higher
- 163 education, any federal or state agency, or other entity as required to implement this chapter;
- 164 ~~[(g)]~~ (f) solicit and accept any grants, gifts, legislative appropriations, and other
- 165 moneys from the state, any unit of federal, state, or local government, or any other person,
- 166 firm, partnership, or corporation for deposit to the administrative fund, endowment fund, or
- 167 the program fund;
- 168 ~~[(h) enter into account agreements with account owners;]~~
- 169 ~~[(i) make payments to institutions of higher education pursuant to account agreements~~

170 on behalf of beneficiaries;]

171 ~~[(j) make refunds to account owners upon the termination of account agreements~~

172 ~~pursuant to the provisions of this chapter;]~~

173 ~~[(k) appoint a program administrator and determine the duties of the program~~

174 ~~administrator and other staff as necessary and fix their compensation;]~~

175 ~~[(†) (g) make provision for the payment of costs of administration and operation of~~

176 ~~the [Utah Educational Savings Plan Trust; and] plan;~~

177 ~~[(m) carry out the duties and obligations of the Utah Educational Savings Plan Trust~~

178 ~~pursuant to this chapter.]~~

179 (h) carry out studies and projections in order to advise account owners regarding

180 present and estimated future higher education costs and levels of financial participation in the

181 plan required in order to enable account owners to achieve their educational funding objective;

182 (i) participate in federal, state, local governmental, or private programs;

183 (j) create public and private partnerships, including investment or management

184 relationships with other 529 plans or entities;

185 (k) promulgate, impose, and collect administrative fees and charges in connection with

186 transactions of the plan, and provide for reasonable service charges;

187 (l) procure insurance:

188 (i) against any loss in connection with the property, assets, or activities of the plan;

189 and

190 (ii) indemnifying any member of the board from personal loss or accountability arising

191 from liability resulting from a member's action or inaction as a member of the plan's board;

192 (m) administer outreach efforts to:

193 (i) market and publicize the plan and its products to existing and prospective account

194 owners; and

195 (ii) encourage economically challenged populations to save for post-secondary

196 education;

197 (n) adopt, trademark, and copyright names and materials for use in marketing and

198 publicizing the plan and its products;

199 (o) administer the funds of the plan;

200 (p) sue and be sued in its own name; and

201 (q) have and exercise any other powers or duties that are necessary or appropriate to
202 carry out and effectuate the purposes of this chapter.

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

204 **53B-8a-104. Office facilities, clerical, and administrative support for the Utah**
205 **Educational Savings Plan.**

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

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

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

211 **53B-8a-105. Powers and duties of board.**

212 (1) The board has all powers necessary to carry out and effectuate the purposes,
213 objectives, and provisions of this chapter pertaining to the [~~Utah Educational Savings Plan~~
214 ~~Trust, including the power to:~~] plan.

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

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

219 (a) administration of the plan; and

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

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

222 [~~(a) one or more investment advisors, registered under the Investment Advisers Act of~~
223 ~~1940, with at least 5,000 advisory clients and at least \$1,000,000,000 under management, to~~
224 ~~provide investment advice to the board with respect to the assets held in each account;]~~

225 [~~(b) an administrator to perform recordkeeping functions on behalf of the Utah~~

226 Educational Savings Plan Trust; and]

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

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

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

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

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

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

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

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

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

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

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

254 **53B-8a-106. Account agreements.**

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

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

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

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

266 (d) Subject to [~~Subsection~~] Subsections (1)(f) and (g), the maximum amount of a
267 qualified investment that a corporation that is an account owner may subtract from unadjusted
268 income for a taxable year in accordance with Title 59, Chapter 7, Corporate Franchise and
269 Income Taxes, is [~~\$1,650~~] \$1,710 for each individual beneficiary for the taxable year
270 beginning on or after January 1, [~~2008~~] 2010, but beginning on or before December 31,
271 [~~2008~~] 2010.

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

275 (i) for a resident or nonresident estate or trust that is an account owner, [~~\$1,650~~]
276 \$1,710 for each individual beneficiary for the taxable year beginning on or after January 1,
277 [~~2008~~] 2010, but beginning on or before December 31, [~~2008~~] 2010;

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

282 December 31, ~~[2008]~~ 2010; or

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

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

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

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

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

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

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

299 (A) round the maximum amount of the qualified investments described in Subsections
300 (1)(d) and (1)(e)(i) and (ii) increased ~~[or decreased]~~ under Subsection (1)(f)(i) to the nearest
301 10 dollar increment; and

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

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

307 (II) two.

308 (iii) For purposes of Subsections (1)(f)(i) and (ii), the ~~[program administrator]~~
309 executive director shall calculate the consumer price index as provided in Sections 1(f)(4) and

310 1(f)(5), Internal Revenue Code.

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

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

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

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

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

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

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

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

329 (4) Each account agreement shall provide that:

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

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

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

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

338 agreement will:

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

340 (b) if admitted, be determined a resident for tuition purposes by the institution of
341 higher education;

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

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

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

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

353 (8) Each account agreement shall provide that:

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

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

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

360 **53B-8a-107. Program, administrative, and endowment funds -- Investment and**
361 **payments from funds.**

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

365 (2) Transfers may be made from the program fund to the administrative fund to pay

366 operating costs:

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

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

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

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

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

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

378 (iii) payments to another 529 plan; or

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

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

383 (i) deposited, according to the nature of the donation, as received into the endowment
384 fund[~~, which shall be promptly~~] or the administrative fund; and

385 (ii) invested and accounted for separately.

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

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

394 board.

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

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

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

401 **53B-8a-108. Cancellation of agreements.**

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

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

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

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

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

410 (a) the death of the beneficiary; or

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

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

413 **53B-8a-109. Repayment and ownership of funds in the account -- Transfer of**
414 **ownership rights.**

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

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

417 (ii) funds are otherwise disbursed;

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

419 (iv) the account is closed.

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

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

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

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

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

429 **53B-8a-110. Effect of payments on determination of need and eligibility for**
430 **student aid.**

431 No student loan program, student grant program, or other program administered by any
432 agency of the state, except as may be otherwise provided by federal law or the provisions of
433 any specific grant applicable to that law, shall take into account and consider amounts
434 available for the payment of higher education costs pursuant to the [~~Utah Educational Savings~~
435 ~~Plan Trust~~] plan in determining need and eligibility for student aid.

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

437 **53B-8a-111. Annual audit of financial statements -- Information to governor and**
438 **Legislature.**

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

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

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

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

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

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

451 **53B-8a-112. Tax considerations.**

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

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

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

458 **53B-8a-113. Property rights to plan assets.**

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

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

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

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

468 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

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

471 (i) a tax commissioner;

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

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

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

- 478 (i) in accordance with judicial order;
- 479 (ii) on behalf of the commission in any action or proceeding under:
 - 480 (A) this title; or
 - 481 (B) other law under which persons are required to file returns with the commission;
- 482 (iii) on behalf of the commission in any action or proceeding to which the commission
- 483 is a party; or
- 484 (iv) on behalf of any party to any action or proceeding under this title if the report or
- 485 facts shown by the return are directly involved in the action or proceeding.
- 486 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may
- 487 admit in evidence, any portion of a return or of the facts shown by the return, as are
- 488 specifically pertinent to the action or proceeding.
- 489 (2) This section does not prohibit:
 - 490 (a) a person or that person's duly authorized representative from receiving a copy of
 - 491 any return or report filed in connection with that person's own tax;
 - 492 (b) the publication of statistics as long as the statistics are classified to prevent the
 - 493 identification of particular reports or returns; and
 - 494 (c) the inspection by the attorney general or other legal representative of the state of
 - 495 the report or return of any taxpayer:
 - 496 (i) who brings action to set aside or review a tax based on the report or return;
 - 497 (ii) against whom an action or proceeding is contemplated or has been instituted under
 - 498 this title; or
 - 499 (iii) against whom the state has an unsatisfied money judgment.
- 500 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the
- 501 commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative
- 502 Rulemaking Act, provide for a reciprocal exchange of information with:
 - 503 (i) the United States Internal Revenue Service; or
 - 504 (ii) the revenue service of any other state.
- 505 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and

506 corporate franchise tax, the commission may by rule, made in accordance with Title 63G,
507 Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and
508 other written statements with the federal government, any other state, any of the political
509 subdivisions of another state, or any political subdivision of this state, except as limited by
510 Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal
511 government grant substantially similar privileges to this state.

512 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and
513 corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3,
514 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the
515 identity and other information of taxpayers who have failed to file tax returns or to pay any tax
516 due.

517 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and
518 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as
519 requested by the executive secretary, any records, returns, or other information filed with the
520 commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5
521 regarding the environmental assurance program participation fee.

522 (e) Notwithstanding Subsection (1), at the request of any person the commission shall
523 provide that person sales and purchase volume data reported to the commission on a report,
524 return, or other information filed with the commission under:

525 (i) Chapter 13, Part 2, Motor Fuel; or

526 (ii) Chapter 13, Part 4, Aviation Fuel.

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

530 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
531 manufacturer and reported to the commission for the previous calendar year under Section
532 59-14-407; and

533 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the

534 manufacturer for which a tax refund was granted during the previous calendar year under
535 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

536 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,
537 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is
538 prohibited from selling cigarettes to consumers within the state under Subsection
539 59-14-210(2).

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

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

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

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

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

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

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

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

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

560 (ii) The information described in Subsection (3)(l)(i) may be provided by the Office of
561 Recovery Services to any other state's child support collection agency involved in enforcing

562 that support obligation.

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

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

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

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

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

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

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

578 (A) gained by the commission; and

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

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

582 (I) address;

583 (II) name;

584 (III) Social Security number; or

585 (IV) taxpayer identification number.

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

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

- 590 (A) as:
- 591 (I) a fiscal estimate;
- 592 (II) fiscal note information; or
- 593 (III) statistical information; and
- 594 (B) if the information is classified to prevent the identification of a particular return.
- 595 (v) (A) A person may not request information from an office under Title 63G, Chapter
- 596 2, Government Records Access and Management Act, or this section, if that office received
- 597 the information from the commission in accordance with this Subsection (3)(o).
- 598 (B) An office may not provide to a person that requests information in accordance
- 599 with Subsection (3)(o)(v)(A) any information other than the information the office provides in
- 600 accordance with Subsection (3)(o)(iv).
- 601 (p) Notwithstanding Subsection (1), the commission may provide to the governing
- 602 board of the agreement or a taxing official of another state, the District of Columbia, the
- 603 United States, or a territory of the United States:
- 604 (i) the following relating to an agreement sales and use tax:
- 605 (A) information contained in a return filed with the commission;
- 606 (B) information contained in a report filed with the commission;
- 607 (C) a schedule related to Subsection (3)(p)(i)(A) or (B); or
- 608 (D) a document filed with the commission; or
- 609 (ii) a report of an audit or investigation made with respect to an agreement sales and
- 610 use tax.
- 611 (q) Notwithstanding Subsection (1), the commission may provide information
- 612 concerning a taxpayer's state income tax return or state income tax withholding information to
- 613 the Driver License Division if the Driver License Division:
- 614 (i) requests the information; and
- 615 (ii) provides the commission with a signed release form from the taxpayer allowing the
- 616 Driver License Division access to the information.
- 617 (r) Notwithstanding Subsection (1), the commission shall provide to the Utah State

618 911 Committee the information requested by the Utah State 911 Committee under Subsection
619 53-10-602(3).

620 (s) Notwithstanding Subsection (1), the commission may provide to the Utah
621 Educational Savings Plan [~~Trust~~] information related to a resident or nonresident individual's
622 contribution to a Utah Educational Savings Plan account as designated on the resident or
623 nonresident's individual income tax return under Section 59-10-1313.

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

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

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

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

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

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

635 (ii) is not subject to:

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

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

638 (6) Except as provided in Section 59-1-404, this part does not apply to the property
639 tax.

640 Section 16. Section **59-7-105** is amended to read:

641 **59-7-105. Additions to unadjusted income.**

642 In computing adjusted income the following amounts shall be added to unadjusted
643 income:

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

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

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

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

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

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

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

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

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

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

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

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

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

674 (12) the amount withdrawn under Title 53B, Chapter 8a, [~~Higher Education Savings~~
 675 ~~Incentive Program~~] Utah Educational Savings Plan, from the account of a corporation that is
 676 an account owner as defined in Section 53B-8a-102, for the taxable year for which the amount
 677 is withdrawn, if that amount withdrawn from the account of the corporation that is the account
 678 owner:

679 (a) is not expended for:
 680 (i) higher education costs as defined in Section 53B-8a-102; [~~and~~] or
 681 (ii) a payment or distribution that qualifies as an exception to the additional tax for
 682 distributions not used for educational expenses provided in Sections 529(c) and 530(d),
 683 Internal Revenue Code; and

684 (b) is subtracted by the corporation:
 685 (i) that is the account owner; and
 686 (ii) in accordance with Subsection 59-7-106(18); and
 687 (13) the amount of the deduction for dividends paid, as defined in Section 561,
 688 Internal Revenue Code, that is allowed under Section 857(b)(2)(B), Internal Revenue Code, in
 689 computing the taxable income of a captive real estate investment trust, if that captive real
 690 estate investment trust is subject to federal income taxation.

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

692 **59-7-106. Subtractions from unadjusted income.**

693 In computing adjusted income the following amounts shall be subtracted from
 694 unadjusted income:

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

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

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

701 (a) deducted in the year incurred; or

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

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

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

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

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

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

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

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

723 (10) charitable contributions, to the extent allowed as a subtraction under Section
724 59-7-109;

725 (11) (a) 50% of the dividends deemed received or received from subsidiaries which
726 are members of the unitary group and are organized or incorporated outside of the United
727 States unless such subsidiaries are included in a combined report under Section 59-7-402 or
728 59-7-403. In arriving at the amount of the dividend exclusion, the taxpayer shall first deduct
729 from the dividends deemed received or received, the expense directly attributable to those

730 dividends. Interest expense attributable to excluded dividends shall be determined by
731 multiplying interest expense by a fraction, the numerator of which is the taxpayer's average
732 investment in such dividend paying subsidiaries, and the denominator of which is the
733 taxpayer's average total investment in assets;

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

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

746 (b) in determining income apportionable to this state, the factors for a foreign
747 operating company shall be included in the combined report factors in the same percentage its
748 adjusted income is included in the combined adjusted income;

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

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

757 (15) (a) adjustments to gains, losses, depreciation expense, amortization expense, and

758 similar items due to a difference between basis for federal purposes and basis as computed
759 under Section 59-7-107; and

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

763 (16) any interest expense not deducted on the federal corporate return under Section
764 265(b) or 291(e), Internal Revenue Code;

765 (17) 100% of the dividends received from subsidiaries which are insurance companies
766 exempt from this chapter under Subsection 59-7-102(1)(c) and are under common ownership;

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

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

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

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

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

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

780 **59-10-114. Additions to and subtractions from adjusted gross income of an**
781 **individual.**

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

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

786 (b) the amount of a child's income calculated under Subsection (4) that:
787 (i) a parent elects to report on the parent's federal individual income tax return for the
788 taxable year; and
789 (ii) the parent does not include in adjusted gross income on the parent's federal
790 individual income tax return for the taxable year;
791 (c) (i) a withdrawal from a medical care savings account and any penalty imposed for
792 the taxable year if:
793 (A) the resident or nonresident individual does not deduct the amounts on the resident
794 or nonresident individual's federal individual income tax return under Section 220, Internal
795 Revenue Code;
796 (B) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and
797 (C) the withdrawal is:
798 (I) subtracted on a return the resident or nonresident individual files under this chapter
799 for a taxable year beginning on or before December 31, 2007; or
800 (II) used as the basis for a resident or nonresident individual to claim a tax credit
801 under Section 59-10-1021;
802 (ii) a disbursement required to be added to adjusted gross income in accordance with
803 Subsection 31A-32a-105(3); or
804 (iii) an amount required to be added to adjusted gross income in accordance with
805 Subsection 31A-32a-105(5)(c);
806 (d) the amount withdrawn under Title 53B, Chapter 8a, [~~Higher Education Savings~~
807 ~~Incentive Program~~] Utah Educational Savings Plan, from the account of a resident or
808 nonresident individual who is an account owner as defined in Section 53B-8a-102, for the
809 taxable year for which the amount is withdrawn, if that amount withdrawn from the account of
810 the resident or nonresident individual who is the account owner:
811 (i) is not expended for;
812 (A) higher education costs as defined in Section 53B-8a-102; [~~and~~] or
813 (B) a payment or distribution that qualifies as an exception to the additional tax for

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

815 Internal Revenue Code; and

816 (ii) is:

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

818 (I) who is the account owner; and

819 (II) on the resident or nonresident individual's return filed under this chapter for a
820 taxable year beginning on or before December 31, 2007; or

821 (B) used as the basis for the resident or nonresident individual who is the account
822 owner to claim a tax credit under Section 59-10-1017;

823 (e) except as provided in Subsection [~~(6)~~ (5)], for bonds, notes, and other evidences of
824 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other
825 evidences of indebtedness issued by one or more of the following entities:

826 (i) a state other than this state;

827 (ii) the District of Columbia;

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

829 (iv) an agency or instrumentality of an entity described in Subsections (1)(e)(i)
830 through (iii);

831 (f) subject to Subsection (2)(c), any distribution received by a resident beneficiary of a
832 resident trust of income that was taxed at the trust level for federal tax purposes, but was
833 subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(b);

834 (g) any distribution received by a resident beneficiary of a nonresident trust of
835 undistributed distributable net income realized by the trust on or after January 1, 2004, if that
836 undistributed distributable net income was taxed at the trust level for federal tax purposes, but
837 was not taxed at the trust level by any state, with undistributed distributable net income
838 considered to be distributed from the most recently accumulated undistributed distributable
839 net income; and

840 (h) any adoption expense:

841 (i) for which a resident or nonresident individual receives reimbursement from another

842 person; and

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

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

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

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

850 (a) the difference between:

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

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

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

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

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

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

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

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

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

867 (A) a state; or

868 (B) the District of Columbia; and

869 (ii) to the extent that amount or distribution is included in adjusted gross income for

870 that taxable year on the federal individual income tax return of the resident or nonresident
871 individual or resident or nonresident beneficiary of a resident trust;

872 (d) the amount of a railroad retirement benefit:

873 (i) paid:

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

876 (B) to a resident or nonresident individual; and

877 (C) for the taxable year; and

878 (ii) to the extent that railroad retirement benefit is included in adjusted gross income
879 on that resident or nonresident individual's federal individual income tax return for that
880 taxable year; and

881 (e) an amount:

882 (i) received by an enrolled member of an American Indian tribe; and

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

885 (A) federal law;

886 (B) a treaty; or

887 (C) a final decision issued by a court of competent jurisdiction.

888 (3) (a) A subtraction for an amount described in Subsection (2)(b) is allowed only if:

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

890 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
891 requirements of this Subsection (3).

892 (b) The agreement described in Subsection (3)(a):

893 (i) may not:

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

895 (B) provide a subtraction under this section greater than or different from the

896 subtraction described in Subsection (2)(b); or

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

898 (ii) shall:

899 (A) provide for the implementation of the subtraction described in Subsection (2)(b);

900 (B) be in writing;

901 (C) be signed by:

902 (I) the governor; and

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

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

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

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

907 year regarding whether or not an agreement meeting the requirements of this Subsection (3) is

908 in effect.

909 (ii) If an agreement meeting the requirements of this Subsection (3) is terminated, the

910 subtraction permitted under Subsection (2)(b) is not allowed for taxable years beginning on or

911 after the January 1 following the termination of the agreement.

912 (d) For purposes of Subsection (2)(b) and in accordance with Title 63G, Chapter 3,

913 Utah Administrative Rulemaking Act, the commission may make rules:

914 (i) for determining whether income is derived from a source within the Uintah and

915 Ouray Reservation; and

916 (ii) that are substantially similar to how adjusted gross income derived from Utah

917 sources is determined under Section 59-10-117.

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

919 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's

920 Interest and Dividends; or

921 (ii) (A) a form designated by the commission in accordance with Subsection

922 (4)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of federal

923 individual income taxes the information contained on 2000 Form 8814 is reported on a form

924 other than Form 8814; and

925 (B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter

926 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form
927 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income
928 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
929 8814.

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

932 (i) the lesser of:

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

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

935 (I) the child's taxable interest;

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

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

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

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

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

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

949 (i) the entity; or

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

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

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

953 **59-10-201. Taxation of resident trusts and estates.**

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

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

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

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

961 (3) A resident estate or trust shall be allowed the credit provided in Section
962 59-10-1003, relating to an income tax imposed by another state, except that the limitation
963 shall be computed by reference to the taxable income of the estate or trust.

964 (4) The property of the Utah Educational Savings Plan [trust] established in Title 53B,
965 Chapter 8a, [~~Higher Education Savings Incentive Program~~] Utah Educational Savings Plan,
966 and its income from operations and investments are exempt from all taxation by the state
967 under this chapter.

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

969 **59-10-202. Additions to and subtractions from unadjusted income of a resident**
970 **or nonresident estate or trust.**

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

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

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

979 (i) a state other than this state;

980 (ii) the District of Columbia;

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

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

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

986 (i) in an S corporation; and

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

988 (d) the amount withdrawn under Title 53B, Chapter 8a, [~~Higher Education Savings~~
989 ~~Incentive Program~~] Utah Educational Savings Plan, from the account of a resident or
990 nonresident estate or trust that is an account owner as defined in Section 53B-8a-102, for the
991 taxable year for which the amount is withdrawn, if that amount withdrawn from the account of
992 the resident or nonresident estate or trust that is the account owner:

993 (i) is not expended for:

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

995 (B) a payment or distribution that qualifies as an exception to the additional tax for
996 distributions not used for educational expenses provided in Sections 529(c) and 530(d),
997 Internal Revenue Code; and

998 (ii) is:

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

1000 (I) that is the account owner; and

1001 (II) on the resident or nonresident estate's or trust's return filed under this chapter for a
1002 taxable year beginning on or before December 31, 2007; or

1003 (B) used as the basis for the resident or nonresident estate or trust that is the account
1004 owner to claim a tax credit under Section 59-10-1017; and

1005 (e) any fiduciary adjustments required by Section 59-10-210.

1006 (2) There shall be subtracted from unadjusted income of a resident or nonresident
1007 estate or trust:

1008 (a) the interest or a dividend on obligations or securities of the United States and its
1009 possessions or of any authority, commission, or instrumentality of the United States, to the

1010 extent that interest or dividend is included in gross income for federal income tax purposes for
1011 the taxable year but exempt from state income taxes under the laws of the United States, but
1012 the amount subtracted under this Subsection (2) shall be reduced by any interest on
1013 indebtedness incurred or continued to purchase or carry the obligations or securities described
1014 in this Subsection (2), and by any expenses incurred in the production of interest or dividend
1015 income described in this Subsection (2) to the extent that such expenses, including
1016 amortizable bond premiums, are deductible in determining federal taxable income;

1017 (b) income of an irrevocable resident trust if:

1018 (i) the income would not be treated as state taxable income derived from Utah sources
1019 under Section 59-10-204 if received by a nonresident trust;

1020 (ii) the trust first became a resident trust on or after January 1, 2004;

1021 (iii) no assets of the trust were held, at any time after January 1, 2003, in another
1022 resident irrevocable trust created by the same settlor or the spouse of the same settlor;

1023 (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);

1024 (v) the amount subtracted under this Subsection (2)(b) is reduced to the extent the
1025 settlor or any other person is treated as an owner of any portion of the trust under Subtitle A,
1026 Subchapter J, Subpart E of the Internal Revenue Code; and

1027 (vi) the amount subtracted under this Subsection (2)(b) is reduced by any interest on
1028 indebtedness incurred or continued to purchase or carry the assets generating the income
1029 described in this Subsection (2)(b), and by any expenses incurred in the production of income
1030 described in this Subsection (2)(b), to the extent that those expenses, including amortizable
1031 bond premiums, are deductible in determining federal taxable income;

1032 (c) if the conditions of Subsection (4)(a) are met, the amount of income of a resident
1033 or nonresident estate or trust derived from a deceased Ute tribal member:

1034 (i) during a time period that the Ute tribal member resided on homesteaded land
1035 diminished from the Uintah and Ouray Reservation; and

1036 (ii) from a source within the Uintah and Ouray Reservation;

1037 (d) any amount:

- 1038 (i) received by a resident or nonresident estate or trust;
- 1039 (ii) that constitutes a refund of taxes imposed by:
 - 1040 (A) a state; or
 - 1041 (B) the District of Columbia; and
- 1042 (iii) to the extent that amount is included in total income on that resident or
- 1043 nonresident estate's or trust's federal tax return for estates and trusts for that taxable year;
- 1044 (e) the amount of a railroad retirement benefit:
 - 1045 (i) paid:
 - 1046 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
 - 1047 seq.;
 - 1048 (B) to a resident or nonresident estate or trust derived from a deceased resident or
 - 1049 nonresident individual; and
 - 1050 (C) for the taxable year; and
 - 1051 (ii) to the extent that railroad retirement benefit is included in total income on that
 - 1052 resident or nonresident estate's or trust's federal tax return for estates and trusts;
 - 1053 (f) an amount:
 - 1054 (i) received by a resident or nonresident estate or trust if that amount is derived from a
 - 1055 deceased enrolled member of an American Indian tribe; and
 - 1056 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
 - 1057 part on that amount in accordance with:
 - 1058 (A) federal law;
 - 1059 (B) a treaty; or
 - 1060 (C) a final decision issued by a court of competent jurisdiction;
 - 1061 (g) the amount that a qualified nongrantor charitable lead trust deducts under Section
 - 1062 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the
 - 1063 qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for
 - 1064 the taxable year; and
 - 1065 (h) any fiduciary adjustments required by Section 59-10-210.

1066 (3) Notwithstanding Subsection (1)(b), interest from bonds, notes, and other evidences
1067 of indebtedness issued by an entity described in Subsections (1)(b)(i) through (iv) may not be
1068 added to unadjusted income of a resident or nonresident estate or trust if, as annually
1069 determined by the commission:

1070 (a) for an entity described in Subsection (1)(b)(i) or (ii), the entity and all of the
1071 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
1072 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

1073 (b) for an entity described in Subsection (1)(b)(iii) or (iv), the following do not impose
1074 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of
1075 this state:

1076 (i) the entity; or

1077 (ii) (A) the state in which the entity is located; or

1078 (B) the District of Columbia, if the entity is located within the District of Columbia.

1079 (4) (a) A subtraction for an amount described in Subsection (2)(c) is allowed only if:

1080 (i) the income is derived from a deceased Ute tribal member; and

1081 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
1082 requirements of this Subsection (4).

1083 (b) The agreement described in Subsection (4)(a):

1084 (i) may not:

1085 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

1086 (B) provide a subtraction under this section greater than or different from the
1087 subtraction described in Subsection (2)(c); or

1088 (C) affect the power of the state to establish rates of taxation; and

1089 (ii) shall:

1090 (A) provide for the implementation of the subtraction described in Subsection (2)(c);

1091 (B) be in writing;

1092 (C) be signed by:

1093 (I) the governor; and

1094 (II) the chair of the Business Committee of the Ute tribe;
1095 (D) be conditioned on obtaining any approval required by federal law; and
1096 (E) state the effective date of the agreement.

1097 (c) (i) The governor shall report to the commission by no later than February 1 of each
1098 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
1099 in effect.

1100 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
1101 subtraction permitted under Subsection (2)(c) is not allowed for taxable years beginning on or
1102 after the January 1 following the termination of the agreement.

1103 (d) For purposes of Subsection (2)(c) and in accordance with Title 63G, Chapter 3,
1104 Utah Administrative Rulemaking Act, the commission may make rules:

1105 (i) for determining whether income is derived from a source within the Uintah and
1106 Ouray Reservation; and

1107 (ii) that are substantially similar to how adjusted gross income derived from Utah
1108 sources is determined under Section 59-10-117.

1109 Section 21. Section **59-10-1017** is amended to read:

1110 **59-10-1017. Utah Educational Savings Plan tax credit.**

1111 (1) As used in this section:

1112 (a) "Account owner" is as defined in Section 53B-8a-102.

1113 (b) "Higher education costs" is as defined in Section 53B-8a-102.

1114 (c) "Maximum amount of a qualified investment for the taxable year" means, for a
1115 taxable year:

1116 (i) for a claimant, estate, or trust that is an account owner, if that claimant, estate, or
1117 trust is other than husband and wife account owners who file a single return jointly, the
1118 maximum amount of a qualified investment:

1119 (A) listed in Subsection 53B-8a-106(1)(e)(ii); and

1120 (B) increased or [~~decreased~~] kept for that taxable year in accordance with [~~Subsection~~]
1121 Subsections 53B-8a-106(1)(f) and (g); or

1122 (ii) for claimants who are husband and wife account owners who file a single return
1123 jointly, the maximum amount of a qualified investment:

1124 (A) listed in Subsection 53B-8a-106(1)(e)(iii); and

1125 (B) increased or [~~decreased~~] kept for that taxable year in accordance with [~~Subsection~~]
1126 Subsections 53B-8a-106(1)(f) and (g).

1127 (d) "Qualified investment" is as defined in Section 53B-8a-102.

1128 (2) Except as provided in Section 59-10-1002.2, a claimant, estate, or trust that is an
1129 account owner may claim a nonrefundable tax credit equal to the product of:

1130 (a) the lesser of:

1131 (i) the amount of a qualified investment the claimant, estate, or trust:

1132 (A) makes during the taxable year; and

1133 (B) does not deduct:

1134 (I) for a claimant, on the claimant's federal individual income tax return; or

1135 (II) for an estate or trust, on the estate's or trust's federal income tax return for estates
1136 and trusts; or

1137 (ii) the maximum amount of a qualified investment for the taxable year if the amount
1138 described in Subsection (2)(a)(i) is greater than the maximum amount of a qualified
1139 investment for the taxable year; and

1140 (b) 5%.

1141 (3) A tax credit under this section may not be carried forward or carried back.

1142 Section 22. Section **59-10-1313** is amended to read:

1143 **59-10-1313. Contribution to a Utah Educational Savings Plan account.**

1144 (1) (a) If a resident or nonresident individual is owed an individual income tax refund
1145 for the taxable year, the individual may designate on the resident or nonresident individual's
1146 income tax return a contribution to a Utah Educational Savings Plan account established under
1147 Title 53B, Chapter 8a, [~~Higher Education Savings Incentive Program~~] Utah Educational
1148 Savings Plan, in the amount of the entire individual income tax refund.

1149 (b) If a resident or nonresident individual is not owed an individual income tax refund

1150 for the taxable year, the individual may not designate on the resident or nonresident's
1151 individual income tax return a contribution to a Utah Educational Savings Plan account.

1152 (2) The commission shall send the contribution to the Utah Educational Savings Plan
1153 [~~Trust~~] along with information requested by the Utah Educational Savings Plan [~~Trust~~],
1154 including the taxpayer's name, Social Security number, and address.

1155 (3) (a) If the taxpayer owns a Utah Educational Savings Plan account, the Utah
1156 Educational Savings Plan [~~Trust~~] shall deposit the contribution into the account.

1157 (b) If the taxpayer owns more than one Utah Educational Savings Plan account, the
1158 Utah Educational Savings Plan [~~Trust~~] shall allocate the contribution among the accounts in
1159 equal amounts.

1160 (c) (i) If the taxpayer does not own a Utah Educational Savings Plan account, the Utah
1161 Educational Savings Plan [~~Trust~~] shall send the taxpayer an account agreement.

1162 (ii) If the taxpayer does not sign and return the account agreement by the date
1163 specified by the Utah Educational Savings Plan [~~Trust~~], the Utah Educational Savings Plan
1164 [~~Trust~~] shall return the contribution to the taxpayer without any interest or earnings.

1165 (4) For the purpose of determining interest on an overpayment or refund under Section
1166 59-1-402, no interest accrues after the commission sends the contribution to the Utah
1167 Educational Savings Plan [~~Trust~~].

1168 Section 23. Section **63G-2-305** is amended to read:

1169 **63G-2-305. Protected records.**

1170 The following records are protected if properly classified by a governmental entity:

1171 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
1172 has provided the governmental entity with the information specified in Section 63G-2-309;

1173 (2) commercial information or nonindividual financial information obtained from a
1174 person if:

1175 (a) disclosure of the information could reasonably be expected to result in unfair
1176 competitive injury to the person submitting the information or would impair the ability of the
1177 governmental entity to obtain necessary information in the future;

1178 (b) the person submitting the information has a greater interest in prohibiting access
1179 than the public in obtaining access; and

1180 (c) the person submitting the information has provided the governmental entity with
1181 the information specified in Section 63G-2-309;

1182 (3) commercial or financial information acquired or prepared by a governmental entity
1183 to the extent that disclosure would lead to financial speculations in currencies, securities, or
1184 commodities that will interfere with a planned transaction by the governmental entity or cause
1185 substantial financial injury to the governmental entity or state economy;

1186 (4) records the disclosure of which could cause commercial injury to, or confer a
1187 competitive advantage upon a potential or actual competitor of, a commercial project entity as
1188 defined in Subsection 11-13-103(4);

1189 (5) test questions and answers to be used in future license, certification, registration,
1190 employment, or academic examinations;

1191 (6) records the disclosure of which would impair governmental procurement
1192 proceedings or give an unfair advantage to any person proposing to enter into a contract or
1193 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
1194 Subsection (6) does not restrict the right of a person to have access to, once the contract or
1195 grant has been awarded, a bid, proposal, or application submitted to or by a governmental
1196 entity in response to:

1197 (a) a request for bids;

1198 (b) a request for proposals;

1199 (c) a grant; or

1200 (d) other similar document;

1201 (7) records that would identify real property or the appraisal or estimated value of real
1202 or personal property, including intellectual property, under consideration for public acquisition
1203 before any rights to the property are acquired unless:

1204 (a) public interest in obtaining access to the information outweighs the governmental
1205 entity's need to acquire the property on the best terms possible;

1206 (b) the information has already been disclosed to persons not employed by or under a
1207 duty of confidentiality to the entity;

1208 (c) in the case of records that would identify property, potential sellers of the described
1209 property have already learned of the governmental entity's plans to acquire the property;

1210 (d) in the case of records that would identify the appraisal or estimated value of
1211 property, the potential sellers have already learned of the governmental entity's estimated value
1212 of the property; or

1213 (e) the property under consideration for public acquisition is a single family residence
1214 and the governmental entity seeking to acquire the property has initiated negotiations to
1215 acquire the property as required under Section 78B-6-505;

1216 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
1217 compensated transaction of real or personal property including intellectual property, which, if
1218 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
1219 of the subject property, unless:

1220 (a) the public interest in access outweighs the interests in restricting access, including
1221 the governmental entity's interest in maximizing the financial benefit of the transaction; or

1222 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
1223 the value of the subject property have already been disclosed to persons not employed by or
1224 under a duty of confidentiality to the entity;

1225 (9) records created or maintained for civil, criminal, or administrative enforcement
1226 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes,
1227 if release of the records:

1228 (a) reasonably could be expected to interfere with investigations undertaken for
1229 enforcement, discipline, licensing, certification, or registration purposes;

1230 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
1231 proceedings;

1232 (c) would create a danger of depriving a person of a right to a fair trial or impartial
1233 hearing;

1234 (d) reasonably could be expected to disclose the identity of a source who is not
1235 generally known outside of government and, in the case of a record compiled in the course of
1236 an investigation, disclose information furnished by a source not generally known outside of
1237 government if disclosure would compromise the source; or

1238 (e) reasonably could be expected to disclose investigative or audit techniques,
1239 procedures, policies, or orders not generally known outside of government if disclosure would
1240 interfere with enforcement or audit efforts;

1241 (10) records the disclosure of which would jeopardize the life or safety of an
1242 individual;

1243 (11) records the disclosure of which would jeopardize the security of governmental
1244 property, governmental programs, or governmental recordkeeping systems from damage, theft,
1245 or other appropriation or use contrary to law or public policy;

1246 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
1247 facility, or records relating to incarceration, treatment, probation, or parole, that would
1248 interfere with the control and supervision of an offender's incarceration, treatment, probation,
1249 or parole;

1250 (13) records that, if disclosed, would reveal recommendations made to the Board of
1251 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
1252 Board of Pardons and Parole, or the Department of Human Services that are based on the
1253 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
1254 jurisdiction;

1255 (14) records and audit workpapers that identify audit, collection, and operational
1256 procedures and methods used by the State Tax Commission, if disclosure would interfere with
1257 audits or collections;

1258 (15) records of a governmental audit agency relating to an ongoing or planned audit
1259 until the final audit is released;

1260 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
1261 litigation that are not available under the rules of discovery;

1262 (17) records disclosing an attorney's work product, including the mental impressions
1263 or legal theories of an attorney or other representative of a governmental entity concerning
1264 litigation;

1265 (18) records of communications between a governmental entity and an attorney
1266 representing, retained, or employed by the governmental entity if the communications would
1267 be privileged as provided in Section 78B-1-137;

1268 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
1269 from a member of the Legislature; and

1270 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
1271 legislative action or policy may not be classified as protected under this section; and

1272 (b) (i) an internal communication that is part of the deliberative process in connection
1273 with the preparation of legislation between:

1274 (A) members of a legislative body;

1275 (B) a member of a legislative body and a member of the legislative body's staff; or

1276 (C) members of a legislative body's staff; and

1277 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
1278 legislative action or policy may not be classified as protected under this section;

1279 (20) (a) records in the custody or control of the Office of Legislative Research and
1280 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
1281 legislation or contemplated course of action before the legislator has elected to support the
1282 legislation or course of action, or made the legislation or course of action public; and

1283 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
1284 Office of Legislative Research and General Counsel is a public document unless a legislator
1285 asks that the records requesting the legislation be maintained as protected records until such
1286 time as the legislator elects to make the legislation or course of action public;

1287 (21) research requests from legislators to the Office of Legislative Research and
1288 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
1289 in response to these requests;

- 1290 (22) drafts, unless otherwise classified as public;
- 1291 (23) records concerning a governmental entity's strategy about collective bargaining or
1292 pending litigation;
- 1293 (24) records of investigations of loss occurrences and analyses of loss occurrences that
1294 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
1295 Uninsured Employers' Fund, or similar divisions in other governmental entities;
- 1296 (25) records, other than personnel evaluations, that contain a personal
1297 recommendation concerning an individual if disclosure would constitute a clearly unwarranted
1298 invasion of personal privacy, or disclosure is not in the public interest;
- 1299 (26) records that reveal the location of historic, prehistoric, paleontological, or
1300 biological resources that if known would jeopardize the security of those resources or of
1301 valuable historic, scientific, educational, or cultural information;
- 1302 (27) records of independent state agencies if the disclosure of the records would
1303 conflict with the fiduciary obligations of the agency;
- 1304 (28) records of an institution within the state system of higher education defined in
1305 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
1306 retention decisions, and promotions, which could be properly discussed in a meeting closed in
1307 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
1308 the final decisions about tenure, appointments, retention, promotions, or those students
1309 admitted, may not be classified as protected under this section;
- 1310 (29) records of the governor's office, including budget recommendations, legislative
1311 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
1312 policies or contemplated courses of action before the governor has implemented or rejected
1313 those policies or courses of action or made them public;
- 1314 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
1315 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
1316 recommendations in these areas;
- 1317 (31) records provided by the United States or by a government entity outside the state

1318 that are given to the governmental entity with a requirement that they be managed as protected
1319 records if the providing entity certifies that the record would not be subject to public
1320 disclosure if retained by it;

1321 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
1322 except as provided in Section 52-4-206;

1323 (33) records that would reveal the contents of settlement negotiations but not
1324 including final settlements or empirical data to the extent that they are not otherwise exempt
1325 from disclosure;

1326 (34) memoranda prepared by staff and used in the decision-making process by an
1327 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
1328 other body charged by law with performing a quasi-judicial function;

1329 (35) records that would reveal negotiations regarding assistance or incentives offered
1330 by or requested from a governmental entity for the purpose of encouraging a person to expand
1331 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
1332 person or place the governmental entity at a competitive disadvantage, but this section may
1333 not be used to restrict access to a record evidencing a final contract;

1334 (36) materials to which access must be limited for purposes of securing or maintaining
1335 the governmental entity's proprietary protection of intellectual property rights including
1336 patents, copyrights, and trade secrets;

1337 (37) the name of a donor or a prospective donor to a governmental entity, including an
1338 institution within the state system of higher education defined in Section 53B-1-102, and other
1339 information concerning the donation that could reasonably be expected to reveal the identity of
1340 the donor, provided that:

1341 (a) the donor requests anonymity in writing;

1342 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
1343 classified protected by the governmental entity under this Subsection (37); and

1344 (c) except for an institution within the state system of higher education defined in
1345 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged

1346 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
1347 over the donor, a member of the donor's immediate family, or any entity owned or controlled
1348 by the donor or the donor's immediate family;

1349 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
1350 73-18-13;

1351 (39) a notification of workers' compensation insurance coverage described in Section
1352 34A-2-205;

1353 (40) (a) the following records of an institution within the state system of higher
1354 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
1355 or received by or on behalf of faculty, staff, employees, or students of the institution:

1356 (i) unpublished lecture notes;

1357 (ii) unpublished notes, data, and information:

1358 (A) relating to research; and

1359 (B) of:

1360 (I) the institution within the state system of higher education defined in Section
1361 53B-1-102; or

1362 (II) a sponsor of sponsored research;

1363 (iii) unpublished manuscripts;

1364 (iv) creative works in process;

1365 (v) scholarly correspondence; and

1366 (vi) confidential information contained in research proposals;

1367 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
1368 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

1369 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

1370 (41) (a) records in the custody or control of the Office of Legislative Auditor General
1371 that would reveal the name of a particular legislator who requests a legislative audit prior to
1372 the date that audit is completed and made public; and

1373 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to

1374 the Office of the Legislative Auditor General is a public document unless the legislator asks
1375 that the records in the custody or control of the Office of Legislative Auditor General that
1376 would reveal the name of a particular legislator who requests a legislative audit be maintained
1377 as protected records until the audit is completed and made public;

1378 (42) records that provide detail as to the location of an explosive, including a map or
1379 other document that indicates the location of:

1380 (a) a production facility; or

1381 (b) a magazine;

1382 (43) information:

1383 (a) contained in the statewide database of the Division of Aging and Adult Services
1384 created by Section 62A-3-311.1; or

1385 (b) received or maintained in relation to the Identity Theft Reporting Information
1386 System (IRIS) established under Section 67-5-22;

1387 (44) information contained in the Management Information System and Licensing
1388 Information System described in Title 62A, Chapter 4a, Child and Family Services;

1389 (45) information regarding National Guard operations or activities in support of the
1390 National Guard's federal mission;

1391 (46) records provided by any pawn or secondhand business to a law enforcement
1392 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
1393 Secondhand Merchandise Transaction Information Act;

1394 (47) information regarding food security, risk, and vulnerability assessments
1395 performed by the Department of Agriculture and Food;

1396 (48) except to the extent that the record is exempt from this chapter pursuant to
1397 Section 63G-2-106, records related to an emergency plan or program prepared or maintained
1398 by the Division of Homeland Security the disclosure of which would jeopardize:

1399 (a) the safety of the general public; or

1400 (b) the security of:

1401 (i) governmental property;

- 1402 (ii) governmental programs; or
- 1403 (iii) the property of a private person who provides the Division of Homeland Security
- 1404 information;
- 1405 (49) records of the Department of Agriculture and Food relating to the National
- 1406 Animal Identification System or any other program that provides for the identification, tracing,
- 1407 or control of livestock diseases, including any program established under Title 4, Chapter 24,
- 1408 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
- 1409 Quarantine;
- 1410 (50) as provided in Section 26-39-501:
- 1411 (a) information or records held by the Department of Health related to a complaint
- 1412 regarding a child care program or residential child care which the department is unable to
- 1413 substantiate; and
- 1414 (b) information or records related to a complaint received by the Department of Health
- 1415 from an anonymous complainant regarding a child care program or residential child care;
- 1416 (51) unless otherwise classified as public under Section 63G-2-301 and except as
- 1417 provided under Section 41-1a-116, an individual's home address, home telephone number, or
- 1418 personal mobile phone number, if:
- 1419 (a) the individual is required to provide the information in order to comply with a law,
- 1420 ordinance, rule, or order of a government entity; and
- 1421 (b) the subject of the record has a reasonable expectation that this information will be
- 1422 kept confidential due to:
- 1423 (i) the nature of the law, ordinance, rule, or order; and
- 1424 (ii) the individual complying with the law, ordinance, rule, or order;
- 1425 (52) the name, home address, work addresses, and telephone numbers of an individual
- 1426 that is engaged in, or that provides goods or services for, medical or scientific research that is:
- 1427 (a) conducted within the state system of higher education, as defined in Section
- 1428 53B-1-102; and
- 1429 (b) conducted using animals;

1430 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement
1431 Private Proposal Program, to the extent not made public by rules made under that chapter;

1432 (54) information collected and a report prepared by the Judicial Performance
1433 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
1434 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
1435 the information or report;

1436 (55) (a) records of the Utah Educational Savings Plan [~~Trust~~] created under Section
1437 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

1438 (b) proposals submitted to the Utah Educational Savings Plan [~~Trust~~]; and

1439 (c) contracts entered into by the Utah Educational Savings Plan [~~Trust~~] and the related
1440 payments;

1441 (56) records contained in the Management Information System created in Section
1442 62A-4a-1003;

1443 (57) records provided or received by the Public Lands Policy Coordinating Office in
1444 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

1445 and

1446 (58) information requested by and provided to the Utah State 911 Committee under
1447 Section 53-10-602.

1448 Section 24. **Effective date.**

1449 If approved by two-thirds of all the members elected to each house, this bill takes effect
1450 upon approval by the governor, or the day following the constitutional time limit of Utah
1451 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
1452 the date of veto override.