

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

7
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 the
14 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 **59-10-114**, as last amended by Laws of Utah 2008, Chapters 382 and 389
- 47 **59-10-201**, as last amended by Laws of Utah 2008, Chapter 389
- 48 **59-10-202**, as last amended by Laws of Utah 2008, Chapters 382 and 389
- 49 **59-10-1017**, as renumbered and amended by Laws of Utah 2008, Chapter 389
- 50 **59-10-1313**, as enacted by Laws of Utah 2009, Chapter 251
- 51 **63G-2-305**, as last amended by Laws of Utah 2009, Chapters 64 and 121



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

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

55 **53B-8-110. Regents' Scholarship Program -- Supplemental award to encourage**
56 **college savings.**

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

59 section.

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

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

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

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

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

68 **53B-8a-101. Purpose.**

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

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

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

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

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

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

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

89 **53B-8a-102. Definitions.**

90 As used in this chapter:

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

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

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

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

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

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

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

107 [~~(7)~~] (8) "Higher education costs" means qualified higher education expenses as
108 defined in Section 529(e)(3), Internal Revenue Code.

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

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

113 [~~(9)~~] (10) "Program fund" means the program fund created under Section 53B-8a-107,
114 which is held as a separate fund within the Utah Educational Savings Plan [~~Trust~~].

115 [~~(10)~~] (11) "Qualified investment" means an amount invested in accordance with an
116 account agreement established under this chapter.

117 [~~(11)~~] (12) "Tuition and fees" means the quarterly or semester charges imposed to
118 attend an institution of higher education and required as a condition of enrollment.

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

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

122 **53B-8a-103. Creation of Utah Educational Savings Plan -- Powers and duties of**
 123 **plan.**

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

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

127 (2) The plan:

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

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

131 (i) consistent with sound fiduciary principles; and

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

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

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

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

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

139 including:

140 (i) contracts for goods and services; and

141 (ii) contracts to engage:

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

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

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

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

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

151 (B) in mutual funds registered under the Investment Company Act of 1940, consistent

152 with the best interests of a designated beneficiary's higher education funding needs; and
153 (ii) are in compliance with rules of the State Money Management Council applicable to
154 gift funds;

155 ~~[(e)]~~ (d) invest moneys within the endowment fund in any investments that are:
156 (i) determined by the board to be appropriate;
157 (ii) approved by the state treasurer; and
158 (iii) in compliance with rules of the State Money Management Council applicable to
159 gift funds;

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

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

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

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

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

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

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

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

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

180 (i) participate in federal, state, local governmental, or private programs;
181 (j) create public and private partnerships, including investment or management
182 relationships with other 529 plans or entities;

183 (k) promulgate, impose, and collect administrative fees and charges in connection with
 184 transactions of the plan, and provide for reasonable service charges;

185 (l) procure insurance:

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

187 (ii) indemnifying any member of the board from personal loss or accountability arising
 188 from liability resulting from a member's action or inaction as a member of the plan's board;

189 (m) administer outreach efforts to:

190 (i) market and publicize the plan and its products to existing and prospective account
 191 owners; and

192 (ii) encourage economically challenged populations to save for post-secondary
 193 education;

194 (n) adopt, trademark, and copyright names and materials for use in marketing and
 195 publicizing the plan and its products;

196 (o) administer the funds of the plan;

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

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

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

201 **53B-8a-104. Office facilities, clerical, and administrative support for the Utah**
 202 **Educational Savings Plan.**

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

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

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

208 **53B-8a-105. Powers and duties of board.**

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

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

214 responsibilities, funds, liabilities, and expenses.

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

216 (a) administration of the plan; and

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

218 [~~(1) engage;~~]

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

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

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

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

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

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

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

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

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

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

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

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

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

251 **53B-8a-106. Account agreements.**

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

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

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

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

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

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

271 (i) for a resident or nonresident estate or trust that is an account owner, [~~\$1,650~~] \$1,710
272 for each individual beneficiary for the taxable year beginning on or after January 1, [~~2008~~]
273 2010, but beginning on or before December 31, [~~2008~~] 2010;

274 (ii) for a resident or nonresident individual that is an account owner, other than a
275 husband and wife who are account owners and file a single return jointly under Title 59,

276 Chapter 10, Individual Income Tax Act, [~~\$1,650~~] \$1,710 for each individual beneficiary for the
277 taxable year beginning on or after January 1, [~~2008~~] 2010, but beginning on or before
278 December 31, [~~2008~~] 2010; or

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

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

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

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

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

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

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

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

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

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

303 (II) two.

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

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

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

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

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

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

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

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

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

325 (4) Each account agreement shall provide that:

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

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

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

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

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

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

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

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

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

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

349 (8) Each account agreement shall provide that:

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

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

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

356 **53B-8a-107. Program, administrative, and endowment funds -- Investment and**
357 **payments from funds.**

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

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

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

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

367 (3) (a) All moneys paid by account owners in connection with account agreements
368 shall be deposited as received into separate accounts within the program fund which shall be

369 [~~promptly~~] invested and accounted for separately.

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

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

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

374 (iii) payments to another 529 plan; or

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

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

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

381 (ii) invested and accounted for separately.

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

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

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

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

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

395 **53B-8a-108. Cancellation of agreements.**

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

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

399 (a) an administrative refund fee, which may be charged by the [~~Utah Educational~~

400 ~~Savings Plan Trust~~] plan, except as provided in Subsection (3); and

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

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

404 (a) the death of the beneficiary; or

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

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

407 **53B-8a-109. Repayment and ownership of funds in the account -- Transfer of**
408 **ownership rights.**

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

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

411 (ii) funds are otherwise disbursed;

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

413 (iv) the account is closed.

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

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

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

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

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

423 **53B-8a-110. Effect of payments on determination of need and eligibility for**
424 **student aid.**

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

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

431 **53B-8a-111. Annual audit of financial statements -- Information to governor and**
432 **Legislature.**

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

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

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

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

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

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

445 **53B-8a-112. Tax considerations.**

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

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

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

452 **53B-8a-113. Property rights to plan assets.**

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

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

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

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

462 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

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

- 465 (i) a tax commissioner;
- 466 (ii) an agent, clerk, or other officer or employee of the commission; or
- 467 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or
468 town.

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

- 472 (i) in accordance with judicial order;
- 473 (ii) on behalf of the commission in any action or proceeding under:
 - 474 (A) this title; or
 - 475 (B) other law under which persons are required to file returns with the commission;
- 476 (iii) on behalf of the commission in any action or proceeding to which the commission
477 is a party; or
- 478 (iv) on behalf of any party to any action or proceeding under this title if the report or
479 facts shown by the return are directly involved in the action or proceeding.

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

483 (2) This section does not prohibit:

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

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

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

- 490 (i) who brings action to set aside or review a tax based on the report or return;
- 491 (ii) against whom an action or proceeding is contemplated or has been instituted under
492 this title; or

493 (iii) against whom the state has an unsatisfied money judgment.

494 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the
495 commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative
496 Rulemaking Act, provide for a reciprocal exchange of information with:

497 (i) the United States Internal Revenue Service; or

498 (ii) the revenue service of any other state.

499 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
500 corporate franchise tax, the commission may by rule, made in accordance with Title 63G,
501 Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and
502 other written statements with the federal government, any other state, any of the political
503 subdivisions of another state, or any political subdivision of this state, except as limited by
504 Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal
505 government grant substantially similar privileges to this state.

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

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

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

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

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

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

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

524 manufacturer and reported to the commission for the previous calendar year under Section
525 59-14-407; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

570 (A) gained by the commission; and

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

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

574 (I) address;

575 (II) name;

576 (III) Social Security number; or

577 (IV) taxpayer identification number.

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

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

582 (A) as:

583 (I) a fiscal estimate;

584 (II) fiscal note information; or

585 (III) statistical information; and

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

587 (v) (A) A person may not request information from an office under Title 63G, Chapter
588 2, Government Records Access and Management Act, or this section, if that office received the
589 information from the commission in accordance with this Subsection (3)(o).

590 (B) An office may not provide to a person that requests information in accordance with
591 Subsection (3)(o)(v)(A) any information other than the information the office provides in
592 accordance with Subsection (3)(o)(iv).

593 (p) Notwithstanding Subsection (1), the commission may provide to the governing
594 board of the agreement or a taxing official of another state, the District of Columbia, the United
595 States, or a territory of the United States:

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

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

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

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

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

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

603 (q) Notwithstanding Subsection (1), the commission may provide information
604 concerning a taxpayer's state income tax return or state income tax withholding information to
605 the Driver License Division if the Driver License Division:

606 (i) requests the information; and

607 (ii) provides the commission with a signed release form from the taxpayer allowing the
608 Driver License Division access to the information.

609 (r) Notwithstanding Subsection (1), the commission shall provide to the Utah State 911
610 Committee the information requested by the Utah State 911 Committee under Subsection
611 53-10-602(3).

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

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

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

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

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

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

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

627 (ii) is not subject to:

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

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

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

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

632 **59-7-105. Additions to unadjusted income.**

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

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

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

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

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

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

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

647 (5) any deduction on the federal return that has been previously deducted on the Utah

648 return;

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

650 (7) the amount of the deduction taken pursuant to Section 59-7-603 for sophisticated

651 technological equipment;

652 (8) charitable contributions, to the extent deducted on the federal return when

653 determining federal taxable income;

654 (9) the amount of gain or loss determined under Section 59-7-114 relating to a target

655 corporation under Section 338, Internal Revenue Code, unless such gain or loss has already

656 been included in the unadjusted income of the target corporation;

657 (10) the amount of gain or loss determined under Section 59-7-115 relating to

658 corporations treated for federal purposes as having disposed of its assets under Section 336(e),

659 Internal Revenue Code, unless such gain or loss has already been included in the unadjusted

660 income of the target corporation;

661 (11) adjustments to gains, losses, depreciation expense, amortization expense, and

662 similar items due to a difference between basis for federal purposes and basis as computed

663 under Section 59-7-107;

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

665 ~~Incentive Program~~] Utah Educational Savings Plan, from the account of a corporation that is an

666 account owner as defined in Section 53B-8a-102, for the taxable year for which the amount is

667 withdrawn, if that amount withdrawn from the account of the corporation that is the account

668 owner:

669 (a) is not expended for:

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

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

672 distributions not used for educational expenses provided in Section 529(c)(6), Internal Revenue

673 Code; and

674 (b) is subtracted by the corporation:

675 (i) that is the account owner; and

676 (ii) in accordance with Subsection 59-7-106(18); and

677 (13) the amount of the deduction for dividends paid, as defined in Section 561, Internal

678 Revenue Code, that is allowed under Section 857(b)(2)(B), Internal Revenue Code, in

679 computing the taxable income of a captive real estate investment trust, if that captive real estate
680 investment trust is subject to federal income taxation.

681 Section 17. Section **59-10-114** is amended to read:

682 **59-10-114. Additions to and subtractions from adjusted gross income of an**
683 **individual.**

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

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

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

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

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

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

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

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

699 (C) the withdrawal is:

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

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

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

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

708 (d) the amount withdrawn under Title 53B, Chapter 8a, [~~Higher Education Savings~~
709 ~~Incentive Program~~] Utah Educational Savings Plan, from the account of a resident or

710 nonresident individual who is an account owner as defined in Section 53B-8a-102, for the
711 taxable year for which the amount is withdrawn, if that amount withdrawn from the account of
712 the resident or nonresident individual who is the account owner:

713 (i) is not expended for:

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

715 (B) a payment or distribution that qualifies as an exception to the additional tax for
716 distributions not used for educational expenses provided in Section 529(c)(6), Internal Revenue
717 Code; and

718 (ii) is:

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

720 (I) who is the account owner; and

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

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

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

728 (i) a state other than this state;

729 (ii) the District of Columbia;

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

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

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

736 (g) any distribution received by a resident beneficiary of a nonresident trust of
737 undistributed distributable net income realized by the trust on or after January 1, 2004, if that
738 undistributed distributable net income was taxed at the trust level for federal tax purposes, but
739 was not taxed at the trust level by any state, with undistributed distributable net income
740 considered to be distributed from the most recently accumulated undistributed distributable net

741 income; and
742 (h) any adoption expense:
743 (i) for which a resident or nonresident individual receives reimbursement from another
744 person; and
745 (ii) to the extent to which the resident or nonresident individual subtracts that adoption
746 expense:
747 (A) on a return filed under this chapter for a taxable year beginning on or before
748 December 31, 2007; or
749 (B) from federal taxable income on a federal individual income tax return.
750 (2) There shall be subtracted from adjusted gross income of a resident or nonresident
751 individual:
752 (a) the difference between:
753 (i) the interest or a dividend on an obligation or security of the United States or an
754 authority, commission, instrumentality, or possession of the United States, to the extent that
755 interest or dividend is:
756 (A) included in adjusted gross income for federal income tax purposes for the taxable
757 year; and
758 (B) exempt from state income taxes under the laws of the United States; and
759 (ii) any interest on indebtedness incurred or continued to purchase or carry the
760 obligation or security described in Subsection (2)(a)(i);
761 (b) for taxable years beginning on or after January 1, 2000, if the conditions of
762 Subsection (3)(a) are met, the amount of income derived by a Ute tribal member:
763 (i) during a time period that the Ute tribal member resides on homesteaded land
764 diminished from the Uintah and Ouray Reservation; and
765 (ii) from a source within the Uintah and Ouray Reservation;
766 (c) an amount received by a resident or nonresident individual or distribution received
767 by a resident or nonresident beneficiary of a resident trust:
768 (i) if that amount or distribution constitutes a refund of taxes imposed by:
769 (A) a state; or
770 (B) the District of Columbia; and
771 (ii) to the extent that amount or distribution is included in adjusted gross income for

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

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

775 (i) paid:

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

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

779 (C) for the taxable year; and

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

783 (e) an amount:

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

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

787 (A) federal law;

788 (B) a treaty; or

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

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

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

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

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

795 (i) may not:

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

797 (B) provide a subtraction under this section greater than or different from the
798 subtraction described in Subsection (2)(b); or

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

800 (ii) shall:

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

802 (B) be in writing;

803 (C) be signed by:
804 (I) the governor; and
805 (II) the chair of the Business Committee of the Ute tribe;
806 (D) be conditioned on obtaining any approval required by federal law; and
807 (E) state the effective date of the agreement.

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

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

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

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

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

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

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

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

827 (B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter
828 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as
829 being substantially similar to 2000 Form 8814 if for purposes of federal individual income
830 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
831 8814.

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

- 834 (i) the lesser of:
- 835 (A) the base amount specified on Form 8814; and
- 836 (B) the sum of the following reported on Form 8814:
- 837 (I) the child's taxable interest;
- 838 (II) the child's ordinary dividends; and
- 839 (III) the child's capital gain distributions; and
- 840 (ii) the amount not taxed that is specified on Form 8814.

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

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

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

- 851 (i) the entity; or
- 852 (ii) (A) the state in which the entity is located; or
- 853 (B) the District of Columbia, if the entity is located within the District of Columbia.

854 Section 18. Section **59-10-201** is amended to read:

855 **59-10-201. Taxation of resident trusts and estates.**

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

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

- 860 (a) a resident estate or trust that is not required to file a federal income tax return for
861 estates and trusts for the taxable year; or
- 862 (b) a resident trust taxed as a corporation.

863 (3) A resident estate or trust shall be allowed the credit provided in Section
864 59-10-1003, relating to an income tax imposed by another state, except that the limitation shall

865 be computed by reference to the taxable income of the estate or trust.

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

870 Section 19. Section **59-10-202** is amended to read:

871 **59-10-202. Additions to and subtractions from unadjusted income of a resident or**
872 **nonresident estate or trust.**

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

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

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

881 (i) a state other than this state;

882 (ii) the District of Columbia;

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

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

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

888 (i) in an S corporation; and

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

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

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

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

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

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

895 (i) is not expended for;

896 (A) higher education costs as defined in Section 53B-8a-102; ~~and~~ or
897 (B) a payment or distribution that qualifies as an exception to the additional tax for
898 distributions not used for educational expenses provided in Section 529(c)(6), Internal Revenue
899 Code; and

900 (ii) is:

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

902 (I) that is the account owner; and

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

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

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

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

910 (a) the interest or a dividend on obligations or securities of the United States and its
911 possessions or of any authority, commission, or instrumentality of the United States, to the
912 extent that interest or dividend is included in gross income for federal income tax purposes for
913 the taxable year but exempt from state income taxes under the laws of the United States, but
914 the amount subtracted under this Subsection (2) shall be reduced by any interest on
915 indebtedness incurred or continued to purchase or carry the obligations or securities described
916 in this Subsection (2), and by any expenses incurred in the production of interest or dividend
917 income described in this Subsection (2) to the extent that such expenses, including amortizable
918 bond premiums, are deductible in determining federal taxable income;

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

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

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

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

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

926 (v) the amount subtracted under this Subsection (2)(b) is reduced to the extent the

927 settlor or any other person is treated as an owner of any portion of the trust under Subtitle A,
928 Subchapter J, Subpart E of the Internal Revenue Code; and

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

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

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

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

939 (d) any amount:

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

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

942 (A) a state; or

943 (B) the District of Columbia; and

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

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

947 (i) paid:

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

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

952 (C) for the taxable year; and

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

955 (f) an amount:

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

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

960 (A) federal law;

961 (B) a treaty; or

962 (C) a final decision issued by a court of competent jurisdiction;

963 (g) the amount that a qualified nongrantor charitable lead trust deducts under Section
964 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the
965 qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for
966 the taxable year; and

967 (h) any fiduciary adjustments required by Section 59-10-210.

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

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

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

978 (i) the entity; or

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

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

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

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

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

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

986 (i) may not:

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

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

989 subtraction described in Subsection (2)(c); or

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

991 (ii) shall:

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

993 (B) be in writing;

994 (C) be signed by:

995 (I) the governor; and

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

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

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

999 (c) (i) The governor shall report to the commission by no later than February 1 of each
1000 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
1001 in effect.

1002 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
1003 subtraction permitted under Subsection (2)(c) is not allowed for taxable years beginning on or
1004 after the January 1 following the termination of the agreement.

1005 (d) For purposes of Subsection (2)(c) and in accordance with Title 63G, Chapter 3,
1006 Utah Administrative Rulemaking Act, the commission may make rules:

1007 (i) for determining whether income is derived from a source within the Uintah and
1008 Ouray Reservation; and

1009 (ii) that are substantially similar to how adjusted gross income derived from Utah
1010 sources is determined under Section 59-10-117.

1011 Section 20. Section **59-10-1017** is amended to read:

1012 **59-10-1017. Utah Educational Savings Plan tax credit.**

1013 (1) As used in this section:

1014 (a) "Account owner" is as defined in Section 53B-8a-102.

1015 (b) "Higher education costs" is as defined in Section 53B-8a-102.

1016 (c) "Maximum amount of a qualified investment for the taxable year" means, for a
1017 taxable year:

1018 (i) for a claimant, estate, or trust that is an account owner, if that claimant, estate, or
1019 trust is other than husband and wife account owners who file a single return jointly, the

1020 maximum amount of a qualified investment:

1021 (A) listed in Subsection 53B-8a-106(1)(e)(ii); and

1022 (B) increased or [~~decreased~~] kept for that taxable year in accordance with [~~Subsection~~]

1023 Subsections 53B-8a-106(1)(f) and (g); or

1024 (ii) for claimants who are husband and wife account owners who file a single return

1025 jointly, the maximum amount of a qualified investment:

1026 (A) listed in Subsection 53B-8a-106(1)(e)(iii); and

1027 (B) increased or [~~decreased~~] kept for that taxable year in accordance with [~~Subsection~~]

1028 Subsections 53B-8a-106(1)(f) and (g).

1029 (d) "Qualified investment" is as defined in Section 53B-8a-102.

1030 (2) Except as provided in Section 59-10-1002.2, a claimant, estate, or trust that is an

1031 account owner may claim a nonrefundable tax credit equal to the product of:

1032 (a) the lesser of:

1033 (i) the amount of a qualified investment the claimant, estate, or trust:

1034 (A) makes during the taxable year; and

1035 (B) does not deduct:

1036 (I) for a claimant, on the claimant's federal individual income tax return; or

1037 (II) for an estate or trust, on the estate's or trust's federal income tax return for estates

1038 and trusts; or

1039 (ii) the maximum amount of a qualified investment for the taxable year if the amount

1040 described in Subsection (2)(a)(i) is greater than the maximum amount of a qualified investment

1041 for the taxable year; and

1042 (b) 5%.

1043 (3) A tax credit under this section may not be carried forward or carried back.

1044 Section 21. Section **59-10-1313** is amended to read:

1045 **59-10-1313. Contribution to a Utah Educational Savings Plan account.**

1046 (1) (a) If a resident or nonresident individual is owed an individual income tax refund

1047 for the taxable year, the individual may designate on the resident or nonresident individual's

1048 income tax return a contribution to a Utah Educational Savings Plan account established under

1049 Title 53B, Chapter 8a, [~~Higher Education Savings Incentive Program~~] Utah Educational

1050 Savings Plan, in the amount of the entire individual income tax refund.

1051 (b) If a resident or nonresident individual is not owed an individual income tax refund
1052 for the taxable year, the individual may not designate on the resident or nonresident's individual
1053 income tax return a contribution to a Utah Educational Savings Plan account.

1054 (2) The commission shall send the contribution to the Utah Educational Savings Plan
1055 [Trust] along with information requested by the Utah Educational Savings Plan [Trust],
1056 including the taxpayer's name, Social Security number, and address.

1057 (3) (a) If the taxpayer owns a Utah Educational Savings Plan account, the Utah
1058 Educational Savings Plan [Trust] shall deposit the contribution into the account.

1059 (b) If the taxpayer owns more than one Utah Educational Savings Plan account, the
1060 Utah Educational Savings Plan [Trust] shall allocate the contribution among the accounts in
1061 equal amounts.

1062 (c) (i) If the taxpayer does not own a Utah Educational Savings Plan account, the Utah
1063 Educational Savings Plan [Trust] shall send the taxpayer an account agreement.

1064 (ii) If the taxpayer does not sign and return the account agreement by the date specified
1065 by the Utah Educational Savings Plan [Trust], the Utah Educational Savings Plan [Trust] shall
1066 return the contribution to the taxpayer without any interest or earnings.

1067 (4) For the purpose of determining interest on an overpayment or refund under Section
1068 59-1-402, no interest accrues after the commission sends the contribution to the Utah
1069 Educational Savings Plan [Trust].

1070 Section 22. Section **63G-2-305** is amended to read:

1071 **63G-2-305. Protected records.**

1072 The following records are protected if properly classified by a governmental entity:

1073 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
1074 has provided the governmental entity with the information specified in Section 63G-2-309;

1075 (2) commercial information or nonindividual financial information obtained from a
1076 person if:

1077 (a) disclosure of the information could reasonably be expected to result in unfair
1078 competitive injury to the person submitting the information or would impair the ability of the
1079 governmental entity to obtain necessary information in the future;

1080 (b) the person submitting the information has a greater interest in prohibiting access
1081 than the public in obtaining access; and

1082 (c) the person submitting the information has provided the governmental entity with
1083 the information specified in Section 63G-2-309;

1084 (3) commercial or financial information acquired or prepared by a governmental entity
1085 to the extent that disclosure would lead to financial speculations in currencies, securities, or
1086 commodities that will interfere with a planned transaction by the governmental entity or cause
1087 substantial financial injury to the governmental entity or state economy;

1088 (4) records the disclosure of which could cause commercial injury to, or confer a
1089 competitive advantage upon a potential or actual competitor of, a commercial project entity as
1090 defined in Subsection 11-13-103(4);

1091 (5) test questions and answers to be used in future license, certification, registration,
1092 employment, or academic examinations;

1093 (6) records the disclosure of which would impair governmental procurement
1094 proceedings or give an unfair advantage to any person proposing to enter into a contract or
1095 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
1096 Subsection (6) does not restrict the right of a person to have access to, once the contract or
1097 grant has been awarded, a bid, proposal, or application submitted to or by a governmental
1098 entity in response to:

1099 (a) a request for bids;

1100 (b) a request for proposals;

1101 (c) a grant; or

1102 (d) other similar document;

1103 (7) records that would identify real property or the appraisal or estimated value of real
1104 or personal property, including intellectual property, under consideration for public acquisition
1105 before any rights to the property are acquired unless:

1106 (a) public interest in obtaining access to the information outweighs the governmental
1107 entity's need to acquire the property on the best terms possible;

1108 (b) the information has already been disclosed to persons not employed by or under a
1109 duty of confidentiality to the entity;

1110 (c) in the case of records that would identify property, potential sellers of the described
1111 property have already learned of the governmental entity's plans to acquire the property;

1112 (d) in the case of records that would identify the appraisal or estimated value of

1113 property, the potential sellers have already learned of the governmental entity's estimated value
1114 of the property; or

1115 (e) the property under consideration for public acquisition is a single family residence
1116 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
1117 the property as required under Section 78B-6-505;

1118 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
1119 compensated transaction of real or personal property including intellectual property, which, if
1120 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
1121 of the subject property, unless:

1122 (a) the public interest in access outweighs the interests in restricting access, including
1123 the governmental entity's interest in maximizing the financial benefit of the transaction; or

1124 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
1125 the value of the subject property have already been disclosed to persons not employed by or
1126 under a duty of confidentiality to the entity;

1127 (9) records created or maintained for civil, criminal, or administrative enforcement
1128 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
1129 release of the records:

1130 (a) reasonably could be expected to interfere with investigations undertaken for
1131 enforcement, discipline, licensing, certification, or registration purposes;

1132 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
1133 proceedings;

1134 (c) would create a danger of depriving a person of a right to a fair trial or impartial
1135 hearing;

1136 (d) reasonably could be expected to disclose the identity of a source who is not
1137 generally known outside of government and, in the case of a record compiled in the course of
1138 an investigation, disclose information furnished by a source not generally known outside of
1139 government if disclosure would compromise the source; or

1140 (e) reasonably could be expected to disclose investigative or audit techniques,
1141 procedures, policies, or orders not generally known outside of government if disclosure would
1142 interfere with enforcement or audit efforts;

1143 (10) records the disclosure of which would jeopardize the life or safety of an

1144 individual;

1145 (11) records the disclosure of which would jeopardize the security of governmental
1146 property, governmental programs, or governmental recordkeeping systems from damage, theft,
1147 or other appropriation or use contrary to law or public policy;

1148 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
1149 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
1150 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

1151 (13) records that, if disclosed, would reveal recommendations made to the Board of
1152 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
1153 Board of Pardons and Parole, or the Department of Human Services that are based on the
1154 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
1155 jurisdiction;

1156 (14) records and audit workpapers that identify audit, collection, and operational
1157 procedures and methods used by the State Tax Commission, if disclosure would interfere with
1158 audits or collections;

1159 (15) records of a governmental audit agency relating to an ongoing or planned audit
1160 until the final audit is released;

1161 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
1162 litigation that are not available under the rules of discovery;

1163 (17) records disclosing an attorney's work product, including the mental impressions or
1164 legal theories of an attorney or other representative of a governmental entity concerning
1165 litigation;

1166 (18) records of communications between a governmental entity and an attorney
1167 representing, retained, or employed by the governmental entity if the communications would be
1168 privileged as provided in Section 78B-1-137;

1169 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
1170 from a member of the Legislature; and

1171 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
1172 legislative action or policy may not be classified as protected under this section; and

1173 (b) (i) an internal communication that is part of the deliberative process in connection
1174 with the preparation of legislation between:

- 1175 (A) members of a legislative body;
- 1176 (B) a member of a legislative body and a member of the legislative body's staff; or
- 1177 (C) members of a legislative body's staff; and
- 1178 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
- 1179 legislative action or policy may not be classified as protected under this section;
- 1180 (20) (a) records in the custody or control of the Office of Legislative Research and
- 1181 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
- 1182 legislation or contemplated course of action before the legislator has elected to support the
- 1183 legislation or course of action, or made the legislation or course of action public; and
- 1184 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
- 1185 Office of Legislative Research and General Counsel is a public document unless a legislator
- 1186 asks that the records requesting the legislation be maintained as protected records until such
- 1187 time as the legislator elects to make the legislation or course of action public;
- 1188 (21) research requests from legislators to the Office of Legislative Research and
- 1189 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
- 1190 in response to these requests;
- 1191 (22) drafts, unless otherwise classified as public;
- 1192 (23) records concerning a governmental entity's strategy about collective bargaining or
- 1193 pending litigation;
- 1194 (24) records of investigations of loss occurrences and analyses of loss occurrences that
- 1195 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
- 1196 Uninsured Employers' Fund, or similar divisions in other governmental entities;
- 1197 (25) records, other than personnel evaluations, that contain a personal recommendation
- 1198 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
- 1199 personal privacy, or disclosure is not in the public interest;
- 1200 (26) records that reveal the location of historic, prehistoric, paleontological, or
- 1201 biological resources that if known would jeopardize the security of those resources or of
- 1202 valuable historic, scientific, educational, or cultural information;
- 1203 (27) records of independent state agencies if the disclosure of the records would
- 1204 conflict with the fiduciary obligations of the agency;
- 1205 (28) records of an institution within the state system of higher education defined in

1206 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
1207 retention decisions, and promotions, which could be properly discussed in a meeting closed in
1208 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
1209 the final decisions about tenure, appointments, retention, promotions, or those students
1210 admitted, may not be classified as protected under this section;

1211 (29) records of the governor's office, including budget recommendations, legislative
1212 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
1213 policies or contemplated courses of action before the governor has implemented or rejected
1214 those policies or courses of action or made them public;

1215 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
1216 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
1217 recommendations in these areas;

1218 (31) records provided by the United States or by a government entity outside the state
1219 that are given to the governmental entity with a requirement that they be managed as protected
1220 records if the providing entity certifies that the record would not be subject to public disclosure
1221 if retained by it;

1222 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
1223 except as provided in Section 52-4-206;

1224 (33) records that would reveal the contents of settlement negotiations but not including
1225 final settlements or empirical data to the extent that they are not otherwise exempt from
1226 disclosure;

1227 (34) memoranda prepared by staff and used in the decision-making process by an
1228 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
1229 other body charged by law with performing a quasi-judicial function;

1230 (35) records that would reveal negotiations regarding assistance or incentives offered
1231 by or requested from a governmental entity for the purpose of encouraging a person to expand
1232 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
1233 person or place the governmental entity at a competitive disadvantage, but this section may not
1234 be used to restrict access to a record evidencing a final contract;

1235 (36) materials to which access must be limited for purposes of securing or maintaining
1236 the governmental entity's proprietary protection of intellectual property rights including patents,

1237 copyrights, and trade secrets;

1238 (37) the name of a donor or a prospective donor to a governmental entity, including an
1239 institution within the state system of higher education defined in Section 53B-1-102, and other
1240 information concerning the donation that could reasonably be expected to reveal the identity of
1241 the donor, provided that:

1242 (a) the donor requests anonymity in writing;

1243 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
1244 classified protected by the governmental entity under this Subsection (37); and

1245 (c) except for an institution within the state system of higher education defined in
1246 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
1247 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
1248 over the donor, a member of the donor's immediate family, or any entity owned or controlled
1249 by the donor or the donor's immediate family;

1250 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
1251 73-18-13;

1252 (39) a notification of workers' compensation insurance coverage described in Section
1253 34A-2-205;

1254 (40) (a) the following records of an institution within the state system of higher
1255 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
1256 or received by or on behalf of faculty, staff, employees, or students of the institution:

1257 (i) unpublished lecture notes;

1258 (ii) unpublished notes, data, and information:

1259 (A) relating to research; and

1260 (B) of:

1261 (I) the institution within the state system of higher education defined in Section
1262 53B-1-102; or

1263 (II) a sponsor of sponsored research;

1264 (iii) unpublished manuscripts;

1265 (iv) creative works in process;

1266 (v) scholarly correspondence; and

1267 (vi) confidential information contained in research proposals;

1268 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
1269 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
1270 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
1271 (41) (a) records in the custody or control of the Office of Legislative Auditor General
1272 that would reveal the name of a particular legislator who requests a legislative audit prior to the
1273 date that audit is completed and made public; and
1274 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
1275 Office of the Legislative Auditor General is a public document unless the legislator asks that
1276 the records in the custody or control of the Office of Legislative Auditor General that would
1277 reveal the name of a particular legislator who requests a legislative audit be maintained as
1278 protected records until the audit is completed and made public;
1279 (42) records that provide detail as to the location of an explosive, including a map or
1280 other document that indicates the location of:
1281 (a) a production facility; or
1282 (b) a magazine;
1283 (43) information:
1284 (a) contained in the statewide database of the Division of Aging and Adult Services
1285 created by Section 62A-3-311.1; or
1286 (b) received or maintained in relation to the Identity Theft Reporting Information
1287 System (IRIS) established under Section 67-5-22;
1288 (44) information contained in the Management Information System and Licensing
1289 Information System described in Title 62A, Chapter 4a, Child and Family Services;
1290 (45) information regarding National Guard operations or activities in support of the
1291 National Guard's federal mission;
1292 (46) records provided by any pawn or secondhand business to a law enforcement
1293 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
1294 Secondhand Merchandise Transaction Information Act;
1295 (47) information regarding food security, risk, and vulnerability assessments performed
1296 by the Department of Agriculture and Food;
1297 (48) except to the extent that the record is exempt from this chapter pursuant to Section
1298 63G-2-106, records related to an emergency plan or program prepared or maintained by the

1299 Division of Homeland Security the disclosure of which would jeopardize:
1300 (a) the safety of the general public; or
1301 (b) the security of:
1302 (i) governmental property;
1303 (ii) governmental programs; or
1304 (iii) the property of a private person who provides the Division of Homeland Security
1305 information;
1306 (49) records of the Department of Agriculture and Food relating to the National
1307 Animal Identification System or any other program that provides for the identification, tracing,
1308 or control of livestock diseases, including any program established under Title 4, Chapter 24,
1309 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
1310 Quarantine;
1311 (50) as provided in Section 26-39-501:
1312 (a) information or records held by the Department of Health related to a complaint
1313 regarding a child care program or residential child care which the department is unable to
1314 substantiate; and
1315 (b) information or records related to a complaint received by the Department of Health
1316 from an anonymous complainant regarding a child care program or residential child care;
1317 (51) unless otherwise classified as public under Section 63G-2-301 and except as
1318 provided under Section 41-1a-116, an individual's home address, home telephone number, or
1319 personal mobile phone number, if:
1320 (a) the individual is required to provide the information in order to comply with a law,
1321 ordinance, rule, or order of a government entity; and
1322 (b) the subject of the record has a reasonable expectation that this information will be
1323 kept confidential due to:
1324 (i) the nature of the law, ordinance, rule, or order; and
1325 (ii) the individual complying with the law, ordinance, rule, or order;
1326 (52) the name, home address, work addresses, and telephone numbers of an individual
1327 that is engaged in, or that provides goods or services for, medical or scientific research that is:
1328 (a) conducted within the state system of higher education, as defined in Section
1329 53B-1-102; and

1330 (b) conducted using animals;

1331 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement
1332 Private Proposal Program, to the extent not made public by rules made under that chapter;

1333 (54) information collected and a report prepared by the Judicial Performance
1334 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
1335 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
1336 the information or report;

1337 (55) (a) records of the Utah Educational Savings Plan [~~Trust~~] created under Section
1338 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

1339 (b) proposals submitted to the Utah Educational Savings Plan [~~Trust~~]; and

1340 (c) contracts entered into by the Utah Educational Savings Plan [~~Trust~~] and the related
1341 payments;

1342 (56) records contained in the Management Information System created in Section
1343 62A-4a-1003;

1344 (57) records provided or received by the Public Lands Policy Coordinating Office in
1345 furtherance of any contract or other agreement made in accordance with Section 63J-4-603; and

1346 (58) information requested by and provided to the Utah State 911 Committee under
1347 Section 53-10-602.

1348 Section 23. **Effective date.**

1349 If approved by two-thirds of all the members elected to each house, this bill takes effect
1350 upon approval by the governor, or the day following the constitutional time limit of Utah
1351 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
1352 the date of veto override.

Legislative Review Note
as of 1-18-10 6:41 AM

Office of Legislative Research and General Counsel

S.B. 95 - Utah Educational Savings Plan Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

By maintaining the previous year's maximum amount of a qualified investment when the consumer price index decreases, the State could forgo a minimal amount of future income tax revenue. For example, the decrease in the consumer price index of 0.4% from 2008 to 2009 resulted in estimated income tax revenue of less than \$5,800 based on Utah residents' contributions and the allowable tax credit.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.