

HB0025S02 compared with HB0025S01

~~text~~ shows text that was in HB0025S01 but was deleted in HB0025S02.

Inserted text shows text that was not in HB0025S01 but was inserted into HB0025S02.

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Senator Curtis S. Bramble proposes the following substitute bill:

TAX INCENTIVE REVIEW AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

Senate Sponsor: ~~Curtis S.~~Deidre M. ~~Bramble~~Henderson

LONG TITLE

General Description:

This bill amends provisions related to legislative review and evaluation of tax incentives and economic development programs.

Highlighted Provisions:

This bill:

- ▶ creates the Economic Development Legislative Liaison Committee;
- ▶ provides for the membership, expenses, duties, and staff support of the committee;
- ▶ requires the Governor's Office of Economic Development to provide the committee with certain information;
- ▶ addresses the confidentiality of and access to information provided to the committee by the Governor's Office of Economic Development;
- ▶ provides that the committee is not a public body for purposes of the Open and

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Public Meetings Act;

- ▶ defines terms;
- ▶ addresses what tax information the State Tax Commission can provide to certain offices;
- ▶ requires the State Tax Commission and Office of the Legislative Fiscal Analyst to conduct a study and to report their findings ~~{ on establishing a methodology for estimating state revenue losses due to sales and use tax exemptions }~~; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides a repeal date.

Utah Code Sections Affected:

AMENDS:

52-4-103, as last amended by Laws of Utah 2016, Chapter 77

59-1-403, as last amended by Laws of Utah 2015, Chapters 411 and 451

63N-1-201, as renumbered and amended by Laws of Utah 2015, Chapter 283

ENACTS:

36-30-101, Utah Code Annotated 1953

36-30-102, Utah Code Annotated 1953

36-30-201, Utah Code Annotated 1953

36-30-202, Utah Code Annotated 1953

36-30-203, Utah Code Annotated 1953

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Section **36-30-101** is enacted to read:

**CHAPTER 30. ECONOMIC DEVELOPMENT LEGISLATIVE
LIAISON COMMITTEE**

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36-30-101. Title.

This chapter is known as the "Economic Development Legislative Liaison Committee."

Section 2. Section **36-30-102** is enacted to read:

36-30-102. Definitions.

As used in this chapter:

(1) "Classification" means the same as that term is defined in Section 63G-2-103.

(2) "Committee" means the Economic Development Legislative Liaison Committee created in this chapter.

(3) "Improperly use" means:

(a) to further substantially one's own or another's personal economic interest;

(b) to secure special privileges or exemptions for one's self or another; or

(c) to cause economic injury or damage to:

(i) an individual or business entity; or

(ii) an individual's or a business entity's property, reputation, or business interests.

(4) "Office" means the Governor's Office of Economic Development created in Section 63N-1-201.

(5) "Record" means the same as that term is defined in Section 63G-2-103.

Section 3. Section **36-30-201** is enacted to read:

36-30-201. Economic Development Legislative Liaison Committee -- Creation -- Membership -- Chairs -- Per diem and expenses.

(1) There is created the Economic Development Legislative Liaison Committee.

(2) The committee membership consists of the following eight members:

(a) four members from the House of Representatives, appointed by the speaker of the House of Representatives, with no more than three from the same political party; and

(b) four members from the Senate, appointed by the president of the Senate, with no more than three members from the same political party.

(3) Five members of the committee constitute a quorum.

(4) (a) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (2)(a) as a cochair of the committee.

(b) The president of the Senate shall designate a member of the Senate appointed under Subsection (2)(b) as a cochair of the committee.

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(5) A committee member shall receive compensation and expenses as provided by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Section 4. Section **36-30-202** is enacted to read:

36-30-202. Duties -- Confidential information -- Records.

(1) The committee shall receive reports from the office regarding:

(a) how the office is:

(i) promoting and encouraging economic development in the state; and

(ii) creating, developing, attracting, and retaining business, industry, and commerce in the state;

(b) an economic development incentive or program the office administers;

(c) a contract or agreement that the office has entered into with a public or private entity;

(d) a grant that the office has made to a public or private entity;

(e) any funds from a public or private source that the office has expended;

(f) any money, services, or facilities the office has solicited or accepted from a public or private donor;

(g) a policy, priority, or objective under which the office operates; or

(h) any other economic development related information that the office can provide.

(2) At the beginning of each meeting, the cochairs of the committee shall inform each individual in attendance that there may be:

(a) restrictions on disclosing or improperly using information the committee receives during the meeting; and

(b) penalties for not complying with the restrictions on disclosing or improperly using information the committee receives during the meeting.

(3) (a) Before adjourning a meeting of the committee, the office shall inform the committee whether the information the office provides under this section is subject to restrictions on disclosing or improperly using the information.

(b) The committee shall comply with any restrictions on the disclosure or improper use of information.

(c) An individual may not disclose or improperly use information that is:

(i) received by the individual at a committee meeting; and

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(ii) determined to be confidential or subject to restrictions on disclosure under Subsection (3)(a).

(d) An individual who intentionally discloses or improperly uses information described under Subsection (3)(c) knowing that the disclosure or use is prohibited under this section is guilty of a class B misdemeanor.

(4) (a) The office's sharing of records with the committee is governed by this section rather than Section 63G-2-206.

(b) The office shall inform the committee of the office's classification of any record the office provides to the committee.

(c) (i) The committee is subject to the same restrictions on disclosure or use of a record the committee receives from the office as the office is subject to.

(ii) An individual that violates the restrictions on disclosure or use described under Subsection (4)(c)(i) is subject to:

(A) the applicable penalties provided under Title 63G, Chapter 2, Government Records Access and Management Act; and

(B) any other applicable penalties provided by law.

(d) A person may not make a request under Title 63G, Chapter 2, Government Records Access and Management Act, or this section, for access to a record in possession of the committee if the committee received the record from the office in accordance with this section.

(5) The committee may not:

(a) request legislation;

(b) recommend legislation;

(c) take a position on a matter of public policy;

(d) except as necessary to obtain the information described in Subsection (1), direct the negotiations, activities, and work of the office; or

(e) require the office to request company-specific tax information from the Utah Tax Commission.

(6) The committee shall comply with the rules of legislative interim committees unless those rules conflict with this section.

(7) The committee may meet as needed.

Section 5. Section **36-30-203** is enacted to read:

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36-30-203. Staff support.

The Office of Legislative Research and General Counsel and the Office of the Legislative Fiscal Analyst shall jointly provide staff services to the committee.

Section 6. Section **52-4-103** is amended to read:

52-4-103. Definitions.

As used in this chapter:

- (1) "Anchor location" means the physical location from which:
 - (a) an electronic meeting originates; or
 - (b) the participants are connected.
- (2) "Capitol hill complex" means the grounds and buildings within the area bounded by 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard in Salt Lake City.
- (3) "Convening" means the calling together of a public body by a person authorized to do so for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction or advisory power.
- (4) "Electronic meeting" means a public meeting convened or conducted by means of a conference using electronic communications.
- (5) "Electronic message" means a communication transmitted electronically, including:
 - (a) electronic mail;
 - (b) instant messaging;
 - (c) electronic chat;
 - (d) text messaging as defined in Section 76-4-401; or
 - (e) any other method that conveys a message or facilitates communication electronically.
- (6) (a) "Meeting" means the convening of a public body or a specified body, with a quorum present, including a workshop or an executive session, whether in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body or specific body has jurisdiction or advisory power.
 - (b) "Meeting" does not mean:
 - (i) a chance gathering or social gathering; or

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(ii) a convening of the State Tax Commission to consider a confidential tax matter in accordance with Section 59-1-405.

(c) "Meeting" does not mean the convening of a public body that has both legislative and executive responsibilities if:

(i) no public funds are appropriated for expenditure during the time the public body is convened; and

(ii) the public body is convened solely for the discussion or implementation of administrative or operational matters:

(A) for which no formal action by the public body is required; or

(B) that would not come before the public body for discussion or action.

(7) "Monitor" means to hear or observe, live, by audio or video equipment, all of the public statements of each member of the public body who is participating in a meeting.

(8) "Participate" means the ability to communicate with all of the members of a public body, either verbally or electronically, so that each member of the public body can hear or observe the communication.

(9) (a) "Public body" means any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:

(i) is created by the Utah Constitution, statute, rule, ordinance, or resolution;

(ii) consists of two or more persons;

(iii) expends, disburses, or is supported in whole or in part by tax revenue; and

(iv) is vested with the authority to make decisions regarding the public's business.

(b) "Public body" includes, as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking.

(c) "Public body" does not include [a]:

(i) a political party, a political group, or a political caucus;

(ii) a conference committee, a rules committee, or a sifting committee of the Legislature; [or]

(iii) a school community council or charter trust land council as defined in Section 53A-1a-108.1[-]; or

(iv) the Economic Development Legislative Liaison Committee created in Section 36-30-201.

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(10) "Public statement" means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.

(11) (a) "Quorum" means a simple majority of the membership of a public body, unless otherwise defined by applicable law.

(b) "Quorum" does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken on a subject over which these elected officials have advisory power.

(12) "Recording" means an audio, or an audio and video, record of the proceedings of a meeting that can be used to review the proceedings of the meeting.

(13) "Specified body":

(a) means an administrative, advisory, executive, or legislative body that:

(i) is not a public body;

(ii) consists of three or more members; and

(iii) includes at least one member who is:

(A) a legislator; and

(B) officially appointed to the body by the president of the Senate, speaker of the House of Representatives, or governor; and

(b) does not include a body listed in Subsection (9)(c)(ii).

(14) "Transmit" means to send, convey, or communicate an electronic message by electronic means.

Section 7. Section **59-1-403** is amended to read:

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

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

(i) a tax commissioner;

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

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

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

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(i) in accordance with judicial order;

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

(A) this title; or

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

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

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

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

(2) This section does not prohibit:

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

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

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

(i) who brings action to set aside or review a tax based on the report or return;

(ii) against whom an action or proceeding is contemplated or has been instituted under this title; or

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

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

(i) the United States Internal Revenue Service; or

(ii) the revenue service of any other state.

(b) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and other written statements with the federal government, any other state, any of the political

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subdivisions of another state, or any political subdivision of this state, except as limited by Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal government grant substantially similar privileges to this state.

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

(d) Notwithstanding Subsection (1), the commission shall provide to the director of the Division of Environmental Response and Remediation, as defined in Section 19-6-402, as requested by the director of the Division of Environmental Response and Remediation, any records, returns, or other information filed with the commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5 regarding the environmental assurance program participation fee.

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

- (i) Chapter 13, Part 2, Motor Fuel; or
- (ii) Chapter 13, Part 4, Aviation Fuel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) Notwithstanding Subsection (1), the commission shall at the request of a committee, commission, or task force of the Legislature provide to the committee, commission, or task force of the Legislature any information relating to a tax imposed under Chapter 9,

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Taxation of Admitted Insurers, relating to the study required by Section 59-9-101.

(o) (i) As used in this Subsection (3)(o) ~~["office"]~~:

(A) "Income tax information" means information gained by the commission that is required to be attached to or included in a return filed with the commission under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act.

(B) "Office" means the ~~[(A)]~~ Office of the Legislative Fiscal Analyst ~~[, or (B)]~~, established in Section 36-12-13, the Office of Legislative Research and General Counsel, established in Section 36-12-12, the Governor's Office of Economic Development, created in Section 63N-1-201, or the Governor's Office of Management and Budget, created in Section 63J-4-2011.

(C) "Other tax information" means information gained by the commission that is required to be attached to or included in a return filed with the commission except for a return filed under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act.

(D) "Tax information" means income tax information or other tax information.

(ii) (A) Notwithstanding Subsection (1) and except as provided in Subsection (3)(o) ~~[(iii)]~~ (ii)(B) or (C), the commission shall at the request of an office provide to the office all income tax information ~~["]~~.

~~[(A) gained by the commission; and]~~

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

~~[(iii) (A) An]~~ (B) For purposes of a request for income tax information made under Subsection (3)(o)(ii)(A), an office may not request and the commission may not provide to an office a person's ~~["]~~ address, name, social security number, or taxpayer identification number.

~~[(I) address;]~~

~~[(H) name;]~~

~~[(III) Social Security number; or]~~

~~[(IV) taxpayer identification number.]~~

~~[(B) The]~~ (C) In providing income tax information to an office, the commission shall in all instances protect the privacy of a person as required by Subsection (3)(o) ~~[(iii)(A)]~~ (ii)(B).

(iii) (A) Notwithstanding Subsection (1) and except as provided in Subsection (3)(o)(iii)(B), the commission shall at the request of an office provide to the office other tax

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information.

(B) Before providing other tax information to an office, the commission shall redact or remove any name, address, social security number, or taxpayer identification number.

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

(A) as^[-] a fiscal estimate, fiscal note information, or statistical information; and

~~[(F) a fiscal estimate;]~~

~~[(H) fiscal note information; or]~~

~~[(H) statistical information; and]~~

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

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

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

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

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

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

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

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

(D) a document filed with the commission; or

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

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

(i) requests the information; and

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

(r) Notwithstanding Subsection (1), the commission shall provide to the Utah Communications Authority, or a division of the Utah Communications Authority, the information requested by the authority under Sections 63H-7a-302, 63H-7a-402, and 63H-7a-502.

(s) Notwithstanding Subsection (1), the commission shall provide to the Utah Educational Savings Plan information related to a resident or nonresident individual's contribution to a Utah Educational Savings Plan account as designated on the resident or nonresident's individual income tax return as provided under Section 59-10-1313.

(t) Notwithstanding Subsection (1), for the purpose of verifying eligibility under Sections 26-18-2.5 and 26-40-105, the commission shall provide an eligibility worker with the Department of Health or its designee with the adjusted gross income of an individual if:

(i) an eligibility worker with the Department of Health or its designee requests the information from the commission; and

(ii) the eligibility worker has complied with the identity verification and consent provisions of Sections 26-18-2.5 and 26-40-105.

(u) Notwithstanding Subsection (1), the commission may provide to a county, as determined by the commission, information declared on an individual income tax return in accordance with Section 59-10-103.1 that relates to eligibility to claim a residential exemption authorized under Section 59-2-103.

(4) (a) Each report and return shall be preserved for at least three years.

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

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

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

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

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- (i) is not guilty of a class A misdemeanor; and
- (ii) is not subject to:
 - (A) dismissal from office in accordance with Subsection (5)(b); or
 - (B) disqualification from holding public office in accordance with Subsection (5)(b).
- (6) Except as provided in Section 59-1-404, this part does not apply to the property tax.

Section 8. Section **63N-1-201** is amended to read:

63N-1-201. Creation of office -- Responsibilities.

- (1) There is created the Governor's Office of Economic Development.
- (2) The office is:
 - (a) responsible for economic development and economic development planning in the state; and
 - (b) the industrial promotion authority of the state.
- (3) The office shall:
 - (a) administer and coordinate state and federal economic development grant programs;
 - (b) promote and encourage the economic, commercial, financial, industrial, agricultural, and civic welfare of the state;
 - (c) act to create, develop, attract, and retain business, industry, and commerce in the state;
 - (d) act to enhance the state's economy;
 - (e) administer programs over which the office is given administrative supervision by the governor;
 - (f) submit an annual written report as described in Section 63N-1-301; [~~and~~]
 - (g) comply with the requirements of Section 36-30-202; and
 - [~~(g)~~] (h) perform other duties as provided by the Legislature.
- (4) In order to perform its duties under this title, the office may:
 - (a) enter into a contract or agreement with, or make a grant to, a public or private entity, including a municipality, if the contract or agreement is not in violation of state statute or other applicable law;
 - (b) except as provided in Subsection (4)(c), receive and expend funds from a public or private source for any lawful purpose that is in the state's best interest; and
 - (c) solicit and accept a contribution of money, services, or facilities from a public or

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private donor, but may not use the contribution for publicizing the exclusive interest of the donor.

(5) Money received under Subsection (4)(c) shall be deposited in the General Fund as dedicated credits of the office.

(6) (a) The office shall obtain the advice of the board before implementing a change to a policy, priority, or objective under which the office operates.

(b) Subsection (6)(a) does not apply to the routine administration by the office of money or services related to the assistance, retention, or recruitment of business, industry, or commerce in the state.

Section 9. Sales tax exemption study.

(1) The Utah State Tax Commission, in consultation with the Office of the Legislative Fiscal Analyst, shall study and prepare a report on the state revenue impacts of the sales and use tax exemptions under Section 59-12-104.

(2) The Utah State Tax Commission and Office of the Legislative Fiscal Analyst shall present the findings of the report to the Revenue and Taxation Interim Committee before November 30, 2017.

Section 10. Effective date.

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

Section 11. Repeal date.

Uncodified Section 9, Sales tax exemption study, is repealed on November 30, 2017.