

HB0039S02 compared with HB0039S01

~~deleted text~~ shows text that was in HB0039S01 but was deleted in HB0039S02.

Inserted text shows text that was not in HB0039S01 but was inserted into HB0039S02.

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Representative Lee B. Perry proposes the following substitute bill:

INDEPENDENT ENTITIES COMPLIANCE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lee B. Perry

Senate Sponsor: ~~_____~~ Wayne A. Harper

LONG TITLE

General Description:

This bill amends code provisions relating to certain independent entities to specify exemption from, or the requirement to comply with, certain code provisions.

Highlighted Provisions:

This bill:

- ▶ amends code provisions relating to certain independent entities to specify exemption from, or the requirement to comply with, the Open and Public Meetings Act, the Government Records Access and Management Act, the Utah Procurement Code, and other code provisions; and
- ▶ specifies the "applicable rulemaking authority" for certain independent entities in relation to the Utah Procurement Code.

Money Appropriated in this Bill:

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None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

4-21-106, as enacted by Laws of Utah 2018, Chapter 393

4-22-107, as last amended by Laws of Utah 2017, Chapter 221 and renumbered and amended by Laws of Utah 2017, Chapter 345

53B-8a-103, as last amended by Laws of Utah 2018, Chapter 306

53C-1-201, as last amended by Laws of Utah 2018, Chapters 13 and 469

53D-1-103, as last amended by Laws of Utah 2017, Chapter 221

63G-6a-103, as last amended by Laws of Utah 2018, Second Special Session, Chapter 4

63H-4-108, as last amended by Laws of Utah 2017, Chapter 221

63H-5-108, as last amended by Laws of Utah 2017, Chapter 221

63H-6-103, as last amended by Laws of Utah 2017, Chapter 221

ENACTS:

~~**63H-7A-104**~~**63H-7a-104**, Utah Code Annotated 1953

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

Section 1. Section **4-21-106** is amended to read:

4-21-106. Exemption from certain operational requirements.

(1) The council is exempt from:

(a) Title 51, Chapter 5, Funds Consolidation Act;

(b) Title 63A, Utah Administrative Services Code, except as provided in Subsection

(2)(c);

(c) Title 63G, Chapter 6a, Utah Procurement Code, but the council shall adopt

procedures to ensure that the council makes purchases:

(i) in a manner that provides for fair competition between providers; and

(ii) at competitive prices;

~~(c)~~ (d) Title 63J, Chapter 1, Budgetary Procedures Act; and

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~~(d)~~ (e) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) The council is subject to:

(a) Title 51, Chapter 7, State Money Management Act;

(b) Title 52, Chapter 4, Open and Public Meetings Act;

(c) Title 63A, Chapter 3, Part 4, Utah Public Finance Website;

(d) Title 63G, Chapter 2, Government Records Access and Management Act;

(e) other Utah Code provisions not specifically exempted under Subsection 4-21-106(1); and

(f) audit by the state auditor pursuant to Title 67, Chapter 3, Auditor, and by the legislative auditor pursuant to Section 36-12-15.

Section 2. Section **4-22-107** is amended to read:

4-22-107. Exemption from certain operational requirements.

(1) The commission is exempt from:

(a) Title 51, Chapter 5, Funds Consolidation Act;

(b) Title 51, Chapter 7, State Money Management Act;

(c) except as provided in Subsection (2)(~~b~~), Title 63A, Utah Administrative Services Code;

(d) Title 63G, Chapter 6a, Utah Procurement Code, but the commission shall adopt procedures to ensure that the commission makes purchases:

(i) in a manner that provides for fair competition between providers; and

(ii) at competitive prices;

~~(d)~~ (e) Title 63J, Chapter 1, Budgetary Procedures Act; and

~~(e)~~ (f) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) The commission is subject to:

(a) Title 52, Chapter 4, Open and Public Meetings Act;

(b) Title 63A, Chapter 3, Part 4, Utah Public Finance Website[-]; and

(c) Title 63G, Chapter 2, Government Records Access and Management Act.

Section 3. Section **53B-8a-103** is amended to read:

53B-8a-103. Creation of Utah Educational Savings Plan -- Powers and duties of plan -- Certain exemptions.

(1) There is created the Utah Educational Savings Plan, which may also be known and

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do business as:

(a) the Utah Educational Savings Plan Trust; or

(b) another related name.

(2) The plan:

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

(b) shall administer the various programs, funds, trusts, plans, functions, duties, and

obligations assigned to the plan:

(i) consistent with sound fiduciary principles; and

(ii) subject to review of the board; and

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

(3) The plan may:

(a) make and enter into contracts necessary for the administration of the plan payable from plan money, including:

(i) contracts for goods and services; and

(ii) contracts to engage personnel, with demonstrated ability or expertise, including consultants, actuaries, managers, counsel, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice;

(b) adopt a corporate seal and change and amend the corporate seal;

(c) invest money within the program, administrative, and endowment funds in accordance with the provisions under Section 53B-8a-107;

(d) enter into agreements with account owners, any institution of higher education, any federal or state agency, or other entity as required to implement this chapter;

(e) solicit and accept any grants, gifts, legislative appropriations, and other money from the state, any unit of federal, state, or local government, or any other person, firm, partnership, or corporation for deposit to the administrative fund, endowment fund, or the program fund;

(f) make provision for the payment of costs of administration and operation of the plan;

(g) carry out studies and projections to advise account owners regarding:

(i) present and estimated future higher education costs; and

(ii) levels of financial participation in the plan required to enable account owners to achieve their educational funding objective;

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- (h) participate in federal, state, local governmental, or private programs;
 - (i) create public and private partnerships, including investment or management relationships with other 529 plans or entities;
 - (j) promulgate, impose, and collect administrative fees and charges in connection with transactions of the plan, and provide for reasonable service charges;
 - (k) procure insurance:
 - (i) against any loss in connection with the property, assets, or activities of the plan; and
 - (ii) indemnifying any member of the board from personal loss or accountability arising from liability resulting from a member's action or inaction as a member of the plan's board;
 - (l) administer outreach efforts to:
 - (i) market and publicize the plan and the plan's products to existing and prospective account owners; and
 - (ii) encourage economically challenged populations to save for post-secondary education;
 - (m) adopt, trademark, and copyright names and materials for use in marketing and publicizing the plan and the plan's products;
 - (n) administer the funds of the plan;
 - (o) sue and be sued in the plan's own name;
 - (p) own institutional accounts in the plan to establish and administer:
 - (i) scholarship programs; or
 - (ii) other college savings incentive programs, including programs designed to enhance the savings of low income account owners investing in the plan; and
 - (q) have and exercise any other powers or duties that are necessary or appropriate to carry out and effectuate the purposes of this chapter.
- (4) (a) Except as provided in Subsection (4)(b), the plan is exempt from the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.
- (b) (i) The annual audited financial statements of the plan described in Section 53B-8a-111 are public records.
- (ii) Financial information that is provided by the plan to the Division of Finance and posted on the Utah Public Finance Website in accordance with Section 63A-3-402 is a public record.

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(5) The plan is subject to:

(a) Title 52, Chapter 4, Open and Public Meetings Act; and

(b) Title 63G, Chapter 6a, Utah Procurement Code.

Section 4. Section **53C-1-201** is amended to read:

53C-1-201. Creation of administration -- Purpose -- Director -- Participation in Risk Management Fund.

(1) (a) There is established within state government the School and Institutional Trust Lands Administration.

(b) The administration shall manage all school and institutional trust lands and assets within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation of Revenue from Trust Lands, and Title 53D, Chapter 1, School and Institutional Trust Fund Management Act.

(2) The administration is an independent state agency and not a division of any other department.

(3) (a) It is subject to the usual legislative and executive department controls except as provided in this Subsection (3).

(b) (i) The director may make rules as approved by the board that allow the administration to classify a business proposal submitted to the administration as protected under Section 63G-2-305, for as long as is necessary to evaluate the proposal.

(ii) The administration shall return the proposal to the party who submitted the proposal, and incur no further duties under Title 63G, Chapter 2, Government Records Access and Management Act, if the administration determines not to proceed with the proposal.

(iii) The administration shall classify the proposal pursuant to law if it decides to proceed with the proposal.

(iv) Section 63G-2-403 does not apply during the review period.

(c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except that the administration is not subject to Subsections 63G-3-301(5), (6), and (7) and Section 63G-3-601, and the director, with the board's approval, may establish a procedure for the expedited approval of rules, based on written findings by the director showing:

(i) the changes in business opportunities affecting the assets of the trust;

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(ii) the specific business opportunity arising out of those changes which may be lost without the rule or changes to the rule;

(iii) the reasons the normal procedures under Section 63G-3-301 cannot be met without causing the loss of the specific opportunity;

(iv) approval by at least five board members; and

(v) that the director has filed a copy of the rule and a rule analysis, stating the specific reasons and justifications for its findings, with the Office of Administrative Rules and notified interested parties as provided in Subsection 63G-3-301(10).

(d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel Management Act, except as provided in this Subsection (3)(d).

(ii) The board may approve, upon recommendation of the director, that exemption for specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable the administration to efficiently fulfill its responsibilities under the law. The director shall consult with the executive director of the Department of Human Resource Management prior to making such a recommendation.

(iii) The positions of director, deputy director, associate director, assistant director, legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).

(iv) Salaries for exempted positions, except for the director, shall be set by the director, after consultation with the executive director of the Department of Human Resource Management, within ranges approved by the board. The board and director shall consider salaries for similar positions in private enterprise and other public employment when setting salary ranges.

(v) The board may create an annual incentive and bonus plan for the director and other administration employees designated by the board, based upon the attainment of financial performance goals and other measurable criteria defined and budgeted in advance by the board.

(e) The administration shall comply with:

(i) Title 52, Chapter 4, Open and Public Meetings Act;

(ii) Title 63G, Chapter 2, Government Records Access and Management Act; and

(iii) Title 63G, Chapter 6a, Utah Procurement Code, except where the board approves, upon recommendation of the director, exemption from the Utah Procurement Code, and

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simultaneous adoption of rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for procurement, which enable the administration to efficiently fulfill its responsibilities under the law.

(f) (i) Except as provided in Subsection (3)(f)(ii), the administration is not subject to the fee agency requirements of Section 63J-1-504.

(ii) The following fees of the administration are subject to the requirements of Section 63J-1-504: application, assignment, amendment, affidavit for lost documents, name change, reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral assignment, electronic payment, and processing.

(g) (i) Notwithstanding Subsection 63J-1-206(2)(c), the administration may transfer funds between its line items.

(ii) Before transferring appropriated funds between line items, the administration shall submit a proposal to the board for its approval.

(iii) If the board gives approval to a proposal to transfer appropriated funds between line items, the administration shall submit the proposal to the Legislative Executive Appropriations Committee for its review and recommendations.

(iv) The Legislative Executive Appropriations Committee may recommend:

(A) that the administration transfer the appropriated funds between line items;

(B) that the administration not transfer the appropriated funds between line items; or

(C) to the governor that the governor call a special session of the Legislature to supplement the appropriated budget for the administration.

(4) The administration is managed by a director of school and institutional trust lands appointed by a majority vote of the board of trustees with the consent of the governor.

(5) (a) The board of trustees shall provide policies for the management of the administration and for the management of trust lands and assets.

(b) The board shall provide policies for the ownership and control of Native American remains that are discovered or excavated on school and institutional trust lands in consultation with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4, Native American Grave Protection and Repatriation Act. The director may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement policies provided by the board regarding Native American remains.

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(6) In connection with joint ventures and other transactions involving trust lands and minerals approved under Sections 53C-1-303 and 53C-2-401, the administration, with board approval, may become a member of a limited liability company under Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405 and is considered a person under Section 48-3a-102.

(7) Subject to the requirements of Subsection 63E-1-304(2), the administration may participate in coverage under the Risk Management Fund created by Section 63A-4-201.

Section 5. Section **53D-1-103** is amended to read:

53D-1-103. Application of other law.

(1) The office, board, and nominating committee are subject to:

(a) Title 52, Chapter 4, Open and Public Meetings Act; and

(b) Title 63A, Chapter 3, Part 4, Utah Public Finance Website.

(2) Subject to Subsection 63E-1-304(2), the office may participate in coverage under the Risk Management Fund, created in Section 63A-4-201.

(3) The office and board are subject to:

(a) Title 63G, Chapter 2, Government Records Access and Management Act[-], except for records relating to investment activities; and

(b) Title 63G, Chapter 6a, Utah Procurement Code.

(4) (a) In making rules under this chapter, the director is subject to and shall comply with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except as provided in Subsection (4)(b).

(b) Subsections 63G-3-301(6) and (7) and Section 63G-3-601 do not apply to the director's making of rules under this chapter.

(5) Title 63G, Chapter 7, Governmental Immunity Act of Utah, applies to a board member to the same extent as it applies to an employee, as defined in Section 63G-7-102.

(6) (a) A board member, the director, and an office employee or agent are subject to:

(i) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act; and

(ii) other requirements that the board establishes.

(b) In addition to any restrictions or requirements imposed under Subsection (6)(a), a board member, the director, and an office employee or agent may not directly or indirectly acquire an interest in the trust fund or receive any direct benefit from any transaction dealing

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with trust fund money.

(7) (a) Except as provided in Subsection (7)(b), the office shall comply with Title 67, Chapter 19, Utah State Personnel Management Act.

(b) (i) Upon a recommendation from the director after the director's consultation with the executive director of the Department of Human Resource Management, the board may provide that specified positions in the office are exempt from Section 67-19-12 and the career service provisions of Title 67, Chapter 19, Utah State Personnel Management Act, as provided in Subsection 67-19-15(1), if the board determines that exemption is required for the office to fulfill efficiently its responsibilities under this chapter.

(ii) The director position is exempt from Section 67-19-12 and the career service provisions of Title 67, Chapter 19, Utah State Personnel Management Act, as provided in Subsection 67-19-15(1).

(iii) (A) After consultation with the executive director of the Department of Human Resource Management, the director shall set salaries for positions that are exempted under Subsection (7)(b)(i), within ranges that the board approves.

(B) In approving salary ranges for positions that are exempted under Subsection (7)(b)(i), the board shall consider salaries for similar positions in private enterprise and other public employment.

(8) The office is subject to legislative appropriation, to executive branch budgetary review and recommendation, and to legislative and executive branch review.

Section 6. Section **63G-6a-103** is amended to read:

63G-6a-103. Definitions.

As used in this chapter:

(1) "Applicable rulemaking authority" means:

(a) for a legislative procurement unit, the Legislative Management Committee;

(b) for a judicial procurement unit, the Judicial Council;

(c) (i) only to the extent of the procurement authority expressly granted to the procurement unit by statute:

(A) for the building board or the Division of Facilities Construction and Management, created in Section 63A-5-201, the building board;

(B) for the Office of the Attorney General, the attorney general; and

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(C) for the Department of Transportation created in Section 72-1-201, the executive director of the Department of Transportation; and

(ii) for each other executive branch procurement unit, the board;

(d) for a local government procurement unit:

(i) the legislative body of the local government procurement unit; or

(ii) an individual or body designated by the legislative body of the local government procurement unit;

(e) for a school district or a public school, the board, except to the extent of a school district's own nonadministrative rules that do not conflict with the provisions of this chapter;

(f) for a state institution of higher education described in:

(i) Subsections 53B-1-102(1)(a) and (c), the State Board of Regents; or

(ii) Subsection 53B-1-102(1)(b), the Utah System of Technical Colleges Board of Trustees;

(g) for the State Board of Education, the State Board of Education;

(h) for a public transit district, the chief executive of the public transit district;

(i) for a local district other than a public transit district or for a special service district:

(i) before January 1, 2015, the board of trustees of the local district or the governing body of the special service district; or

(ii) on or after January 1, 2015, the board, except to the extent that the board of trustees of the local district or the governing body of the special service district makes its own rules:

(A) with respect to a subject addressed by board rules; or

(B) that are in addition to board rules;

(j) for the Utah Educational Savings Plan, created in Section 53B-8a-103, the board of directors of the Utah Educational Savings Plan;

(k) for the School and Institutional Trust Lands Administration, created in Section 53C-1-201, the School and Institutional Trust Lands Board of Trustees;

(l) for the School and Institutional Trust Fund Office, created in Section 53D-1-201, the School and Institutional Trust Fund Board of Trustees;

[~~(f)~~] (m) for the Utah Communications Authority, established in Section 63H-7a-201, the Utah Communications Authority Board, created in Section 63H-7a-203; or

[~~(k)~~] (n) for any other procurement unit, the board.

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(2) "Approved vendor" means a person who has been approved for inclusion on an approved vendor list through the approved vendor list process.

(3) "Approved vendor list" means a list of approved vendors established under Section 63G-6a-507.

(4) "Approved vendor list process" means the procurement process described in Section 63G-6a-507.

(5) "Bidder" means a person who submits a bid or price quote in response to an invitation for bids.

(6) "Bidding process" means the procurement process described in Part 6, Bidding.

(7) "Board" means the Utah State Procurement Policy Board, created in Section 63G-6a-202.

(8) "Building board" means the State Building Board, created in Section 63A-5-101.

(9) "Change directive" means a written order signed by the procurement officer that directs the contractor to suspend work or make changes, as authorized by contract, without the consent of the contractor.

(10) "Change order" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual agreement of the parties to the contract.

(11) "Chief procurement officer" means the chief procurement officer appointed under Subsection 63G-6a-302(1).

(12) "Conducting procurement unit" means a procurement unit that conducts all aspects of a procurement:

(a) except:

(i) reviewing a solicitation to verify that it is in proper form; and

(ii) causing the publication of a notice of a solicitation; and

(b) including:

(i) preparing any solicitation document;

(ii) appointing an evaluation committee;

(iii) conducting the evaluation process, except as provided in Subsection 63G-6a-707(6)(b) relating to scores calculated for costs of proposals;

(iv) selecting and recommending the person to be awarded a contract;

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(v) negotiating the terms and conditions of a contract, subject to the issuing procurement unit's approval; and

(vi) contract administration.

(13) "Conservation district" means the same as that term is defined in Section 17D-3-102.

(14) "Construction":

(a) means services, including work, and supplies for a project for the construction, renovation, alteration, improvement, or repair of a public facility on real property; and

(b) does not include services and supplies for the routine, day-to-day operation, repair, or maintenance of an existing public facility.

(15) "Construction manager/general contractor":

(a) means a contractor who enters into a contract:

(i) for the management of a construction project; and

(ii) that allows the contractor to subcontract for additional labor and materials that are not included in the contractor's cost proposal submitted at the time of the procurement of the contractor's services; and

(b) does not include a contractor whose only subcontract work not included in the contractor's cost proposal submitted as part of the procurement of the contractor's services is to meet subcontracted portions of change orders approved within the scope of the project.

(16) "Construction subcontractor":

(a) means a person under contract with a contractor or another subcontractor to provide services or labor for the design or construction of a construction project;

(b) includes a general contractor or specialty contractor licensed or exempt from licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and

(c) does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor for a construction project.

(17) "Contract" means an agreement for a procurement.

(18) "Contract administration" means all functions, duties, and responsibilities associated with managing, overseeing, and carrying out a contract between a procurement unit and a contractor, including:

(a) implementing the contract;

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(b) ensuring compliance with the contract terms and conditions by the conducting procurement unit and the contractor;

(c) executing change orders;

(d) processing contract amendments;

(e) resolving, to the extent practicable, contract disputes;

(f) curing contract errors and deficiencies;

(g) terminating a contract;

(h) measuring or evaluating completed work and contractor performance;

(i) computing payments under the contract; and

(j) closing out a contract.

(19) "Contractor" means a person who is awarded a contract with a procurement unit.

(20) "Cooperative procurement" means procurement conducted by, or on behalf of:

(a) more than one procurement unit; or

(b) a procurement unit and a cooperative purchasing organization.

(21) "Cooperative purchasing organization" means an organization, association, or alliance of purchasers established to combine purchasing power in order to obtain the best value for the purchasers by engaging in procurements in accordance with Section 63G-6a-2105.

(22) "Cost-plus-a-percentage-of-cost contract" means a contract under which the contractor is paid a percentage of the total actual expenses or costs in addition to the contractor's actual expenses or costs.

(23) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

(24) "Days" means calendar days, unless expressly provided otherwise.

(25) "Definite quantity contract" means a fixed price contract that provides for a specified amount of supplies over a specified period, with deliveries scheduled according to a specified schedule.

(26) "Design professional" means:

(a) an individual licensed as an architect under Title 58, Chapter 3a, Architects Licensing Act; or

(b) an individual licensed as a professional engineer or professional land surveyor

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under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

(27) "Design professional procurement process" means the procurement process described in Part 15, Design Professional Services.

~~[(28) "Design-build" means the procurement of design professional services and construction by the use of a single contract.]~~

~~[(29)]~~ (28) "Design professional services" means:

(a) professional services within the scope of the practice of architecture as defined in Section 58-3a-102;

(b) professional engineering as defined in Section 58-22-102; or

(c) master planning and programming services.

(29) "Design-build" means the procurement of design professional services and construction by the use of a single contract.

(30) "Director" means the director of the division.

(31) "Division" means the Division of Purchasing and General Services, created in Section 63A-2-101.

(32) "Educational procurement unit" means:

(a) a school district;

(b) a public school, including a local school board or a charter school;

(c) the Utah Schools for the Deaf and Blind;

(d) the Utah Education and Telehealth Network;

(e) an institution of higher education of the state described in Section 53B-1-102; or

(f) the State Board of Education.

(33) "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(34) "Executive branch procurement unit" means a department, division, office,

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bureau, agency, or other organization within the state executive branch.

(35) "Fixed price contract" means a contract that provides a price, for each procurement item obtained under the contract, that is not subject to adjustment except to the extent that:

(a) the contract provides, under circumstances specified in the contract, for an adjustment in price that is not based on cost to the contractor; or

(b) an adjustment is required by law.

(36) "Fixed price contract with price adjustment" means a fixed price contract that provides for an upward or downward revision of price, precisely described in the contract, that:

(a) is based on the consumer price index or another commercially acceptable index, source, or formula; and

(b) is not based on a percentage of the cost to the contractor.

(37) "Grant" means an expenditure of public funds or other assistance, or an agreement to expend public funds or other assistance, for a public purpose authorized by law, without acquiring a procurement item in exchange.

(38) "Head of a procurement unit" means:

(a) for a legislative procurement unit, any person designated by rule made by the applicable rulemaking authority;

(b) for an executive branch procurement unit:

(i) the director of the division; or

(ii) any other person designated by the board, by rule;

(c) for a judicial procurement unit:

(i) the Judicial Council; or

(ii) any other person designated by the Judicial Council, by rule;

(d) for a local government procurement unit:

(i) the legislative body of the local government procurement unit; or

(ii) any other person designated by the local government procurement unit;

(e) for a local district other than a public transit district, the board of trustees of the local district or a designee of the board of trustees;

(f) for a special service district, the governing body of the special service district or a designee of the governing body;

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(g) for a local building authority, the board of directors of the local building authority or a designee of the board of directors;

(h) for a conservation district, the board of supervisors of the conservation district or a designee of the board of supervisors;

(i) for a public corporation, the board of directors of the public corporation or a designee of the board of directors;

(j) for a school district or any school or entity within a school district, the board of the school district, or the board's designee;

(k) for a charter school, the individual or body with executive authority over the charter school, or the individual's or body's designee;

(l) for an institution of higher education described in Section 53B-2-101, the president of the institution of higher education, or the president's designee;

(m) for a public transit district, the board of trustees or a designee of the board of trustees;

(n) for the State Board of Education, the State Board of Education or a designee of the State Board of Education; or

(o) for the Utah Communications Authority, established in Section 63H-7a-201, the executive director of the Utah Communications Authority or a designee of the executive director.

(39) "Immaterial error":

(a) means an irregularity or abnormality that is:

(i) a matter of form that does not affect substance; or

(ii) an inconsequential variation from a requirement of a solicitation that has no, little, or a trivial effect on the procurement process and that is not prejudicial to other vendors; and

(b) includes:

(i) a missing signature, missing acknowledgment of an addendum, or missing copy of a professional license, bond, or insurance certificate;

(ii) a typographical error;

(iii) an error resulting from an inaccuracy or omission in the solicitation; and

(iv) any other error that the chief procurement officer or the head of a procurement unit with independent procurement authority reasonably considers to be immaterial.

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(40) "Indefinite quantity contract" means a fixed price contract that:

(a) is for an indefinite amount of procurement items to be supplied as ordered by a procurement unit; and

(b) (i) does not require a minimum purchase amount; or

(ii) provides a maximum purchase limit.

(41) "Independent procurement authority" means authority granted to a procurement unit under Subsection 63G-6a-106(4)(a).

(42) "Invitation for bids":

(a) means a document used to solicit:

(i) bids to provide a procurement item to a procurement unit; or

(ii) quotes for a price of a procurement item to be provided to a procurement unit; and

(b) includes all documents attached to or incorporated by reference in a document described in Subsection (42)(a).

(43) "Issuing procurement unit" means a procurement unit that:

(a) reviews a solicitation to verify that it is in proper form;

(b) causes the notice of a solicitation to be published; and

(c) negotiates and approves the terms and conditions of a contract.

(44) "Judicial procurement unit" means:

(a) the Utah Supreme Court;

(b) the Utah Court of Appeals;

(c) the Judicial Council;

(d) a state judicial district; or

(e) an office, committee, subcommittee, or other organization within the state judicial branch.

(45) "Labor hour contract" is a contract under which:

(a) the supplies and materials are not provided by, or through, the contractor; and

(b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and profit for a specified number of labor hours or days.

(46) "Legislative procurement unit" means:

(a) the Legislature;

(b) the Senate;

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- (c) the House of Representatives;
- (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
- (e) a committee, subcommittee, commission, or other organization:
 - (i) within the state legislative branch; or
 - (ii) (A) that is created by statute to advise or make recommendations to the Legislature;
 - (B) the membership of which includes legislators; and
 - (C) for which the Office of Legislative Research and General Counsel provides staff

support.

(47) "Local building authority" means the same as that term is defined in Section 17D-2-102.

(48) "Local district" means the same as that term is defined in Section 17B-1-102.

(49) "Local government procurement unit" means:

(a) a county or municipality, and each office or agency of the county or municipality, unless the county or municipality adopts its own procurement code by ordinance;

(b) a county or municipality that has adopted this entire chapter by ordinance, and each office or agency of that county or municipality; or

(c) a county or municipality that has adopted a portion of this chapter by ordinance, to the extent that a term in the ordinance is used in the adopted portion of this chapter, and each office or agency of that county or municipality.

(50) "Multiple award contracts" means the award of a contract for an indefinite quantity of a procurement item to more than one person.

(51) "Multiyear contract" means a contract that extends beyond a one-year period, including a contract that permits renewal of the contract, without competition, beyond the first year of the contract.

(52) "Municipality" means a city, town, or metro township.

(53) "Nonadopting local government procurement unit" means:

(a) a county or municipality that has not adopted Part 16, Protests, Part 17, Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19, General Provisions Related to Protest or Appeal; and

(b) each office or agency of a county or municipality described in Subsection (53)(a).

(54) "Offeror" means a person who submits a proposal in response to a request for

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proposals.

(55) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.

(56) "Procure" means to acquire a procurement item through a procurement.

(57) "Procurement":

(a) means a procurement unit's acquisition of a procurement item through an expenditure of public funds, or an agreement to expend public funds, including an acquisition through a public-private partnership;

(b) includes all functions that pertain to the acquisition of a procurement item, including:

(i) preparing and issuing a solicitation; and

(ii) (A) conducting a standard procurement process; or

(B) conducting a procurement process that is an exception to a standard procurement process under Part 8, Exceptions to Procurement Requirements; and

(c) does not include a grant.

(58) "Procurement item" means a supply, a service, or construction.

(59) "Procurement officer" means:

(a) for a procurement unit with independent procurement authority:

(i) the head of the procurement unit;

(ii) a designee of the head of the procurement unit; or

(iii) a person designated by rule made by the applicable rulemaking authority; or

(b) for the division or a procurement unit without independent procurement authority, the chief procurement officer.

(60) "Procurement unit":

(a) means:

(i) a legislative procurement unit;

(ii) an executive branch procurement unit;

(iii) a judicial procurement unit;

(iv) an educational procurement unit;

(v) the Utah Communications Authority, established in Section 63H-7a-201;

(vi) a local government procurement unit;

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- (vii) a local district;
- (viii) a special service district;
- (ix) a local building authority;
- (x) a conservation district;
- (xi) a public corporation; or
- (xii) a public transit district; and

(b) does not include a political subdivision created under Title 11, Chapter 13,

Interlocal Cooperation Act.

(61) "Professional service" means labor, effort, or work that requires an elevated degree of specialized knowledge and discretion, including labor, effort, or work in the field of:

- (a) accounting;
- (b) administrative law judge service;
- (c) architecture;
- (d) construction design and management;
- (e) engineering;
- (f) financial services;
- (g) information technology;
- (h) the law;
- (i) medicine;
- (j) psychiatry; or
- (k) underwriting.

(62) "Protest officer" means:

(a) for the division or a procurement unit with independent procurement authority:

(i) the head of the procurement unit;

(ii) the head of the procurement unit's designee who is an employee of the procurement

unit; or

(iii) a person designated by rule made by the applicable rulemaking authority; or

(b) for a procurement unit without independent procurement authority, the chief procurement officer or the chief procurement officer's designee who is an employee of the division.

(63) "Public corporation" means the same as that term is defined in Section 63E-1-102.

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(64) "Public entity" means any government entity of the state or political subdivision of the state, including:

(a) a procurement unit;

(b) a municipality or county, regardless of whether the municipality or county has adopted this chapter or any part of this chapter; and

(c) any other government entity located in the state that expends public funds.

(65) "Public facility" means a building, structure, infrastructure, improvement, or other facility of a public entity.

(66) "Public funds" means money, regardless of its source, including from the federal government, that is owned or held by a procurement unit.

(67) "Public transit district" means a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act.

(68) "Public-private partnership" means an arrangement or agreement, occurring on or after January 1, 2017, between a procurement unit and one or more contractors to provide for a public need through the development or operation of a project in which the contractor or contractors share with the procurement unit the responsibility or risk of developing, owning, maintaining, financing, or operating the project.

(69) "Qualified vendor" means a vendor who:

(a) is responsible; and

(b) submits a responsive statement of qualifications under Section 63G-6a-410 that meets the minimum mandatory requirements, evaluation criteria, and any applicable score thresholds set forth in the request for statement of qualifications.

(70) "Real property" means land and any building, fixture, improvement, appurtenance, structure, or other development that is permanently affixed to land.

(71) "Request for information" means a nonbinding process through which a procurement unit requests information relating to a procurement item.

(72) "Request for proposals" means a document used to solicit proposals to provide a procurement item to a procurement unit, including all other documents that are attached to that document or incorporated in that document by reference.

(73) "Request for proposals process" means the procurement process described in Part 7, Request for Proposals.

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(74) "Request for statement of qualifications" means a document used to solicit information about the qualifications of a person interested in responding to a potential procurement, including all other documents attached to that document or incorporated in that document by reference.

(75) "Requirements contract" means a contract:

(a) under which a contractor agrees to provide a procurement unit's entire requirements for certain procurement items at prices specified in the contract during the contract period; and

(b) that:

(i) does not require a minimum purchase amount; or

(ii) provides a maximum purchase limit.

(76) "Responsible" means being capable, in all respects, of:

(a) meeting all the requirements of a solicitation; and

(b) fully performing all the requirements of the contract resulting from the solicitation, including being financially solvent with sufficient financial resources to perform the contract.

(77) "Responsive" means conforming in all material respects to the requirements of a solicitation.

(78) "Sealed" means manually or electronically secured to prevent disclosure.

(79) "Service":

(a) means labor, effort, or work to produce a result that is beneficial to a procurement unit;

(b) includes a professional service; and

(c) does not include labor, effort, or work provided under an employment agreement or a collective bargaining agreement.

(80) "Small purchase process" means the procurement process described in Section 63G-6a-506.

(81) "Sole source contract" means a contract resulting from a sole source procurement.

(82) "Sole source procurement" means a procurement without competition pursuant to a determination under Subsection 63G-6a-802(1)(a) that there is only one source for the procurement item.

(83) "Solicitation" means an invitation for bids, request for proposals, request for statement of qualifications, or request for information.

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(84) "Solicitation response" means:

- (a) a bid submitted in response to an invitation for bids;
- (b) a proposal submitted in response to a request for proposals; or
- (c) a statement of qualifications submitted in response to a request for statement of qualifications.

(85) "Special service district" means the same as that term is defined in Section 17D-1-102.

(86) "Specification" means any description of the physical or functional characteristics or of the nature of a procurement item included in an invitation for bids or a request for proposals, or otherwise specified or agreed to by a procurement unit, including a description of:

- (a) a requirement for inspecting or testing a procurement item; or
- (b) preparing a procurement item for delivery.

(87) "Standard procurement process" means:

- (a) the bidding process;
- (b) the request for proposals process;
- (c) the approved vendor list process;
- (d) the small purchase process; or
- (e) the design professional procurement process.

(88) "State cooperative contract" means a contract awarded by the division for and in behalf of all public entities.

(89) "Statement of qualifications" means a written statement submitted to a procurement unit in response to a request for statement of qualifications.

(90) "Subcontractor":

(a) means a person under contract to perform part of a contractual obligation under the control of the contractor, whether the person's contract is with the contractor directly or with another person who is under contract to perform part of a contractual obligation under the control of the contractor; and

(b) includes a supplier, distributor, or other vendor that furnishes supplies or services to a contractor.

(91) "Supply" means a good, material, technology, piece of equipment, or any other item of personal property.

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(92) "Tie bid" means that the lowest responsive bids of responsible bidders are identical in price.

(93) "Time and materials contract" means a contract under which the contractor is paid:

(a) the actual cost of direct labor at specified hourly rates;

(b) the actual cost of materials and equipment usage; and

(c) an additional amount, expressly described in the contract, to cover overhead and profit, that is not based on a percentage of the cost to the contractor.

(94) "Transitional costs":

(a) means the costs of changing:

(i) from an existing provider of a procurement item to another provider of that procurement item; or

(ii) from an existing type of procurement item to another type;

(b) includes:

(i) training costs;

(ii) conversion costs;

(iii) compatibility costs;

(iv) costs associated with system downtime;

(v) disruption of service costs;

(vi) staff time necessary to implement the change;

(vii) installation costs; and

(viii) ancillary software, hardware, equipment, or construction costs; and

(c) does not include:

(i) the costs of preparing for or engaging in a procurement process; or

(ii) contract negotiation or drafting costs.

(95) "Trial use contract" means a contract for a procurement item that the procurement unit acquires for a trial use or testing to determine whether the procurement item will benefit the procurement unit.

(96) "Vendor":

(a) means a person who is seeking to enter into a contract with a procurement unit to provide a procurement item; and

(b) includes:

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- (i) a bidder;
- (ii) an offeror;
- (iii) an approved vendor;
- (iv) a design professional; and
- (v) a person who submits an unsolicited proposal under Section 63G-6a-712.

Section 7. Section **63H-4-108** is amended to read:

63H-4-108. Relation to certain acts -- Participation in Risk Management Fund.

(1) The authority is exempt from:

- (a) Title 51, Chapter 5, Funds Consolidation Act;
- (b) except as provided in Subsection (2)(b), Title 63A, Utah Administrative Services

Code;

~~[(c) Title 63G, Chapter 6a, Utah Procurement Code;]~~

~~[(d)]~~ (c) Title 63J, Chapter 1, Budgetary Procedures Act; and

~~[(e)]~~ (d) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) The authority is subject to:

- (a) Title 52, Chapter 4, Open and Public Meetings Act;
- (b) Title 63A, Chapter 3, Part 4, Utah Public Finance Website[-];
- (c) Title 63G, Chapter 2, Government Records Access and Management Act; and
- (d) Title 63G, Chapter 6a, Utah Procurement Code.

(3) The authority is subject to audit by the state auditor pursuant to Title 67, Chapter 3, Auditor, and by the legislative auditor general pursuant to Section 36-12-15.

(4) Subject to the requirements of Subsection 63E-1-304(2), the authority may participate in coverage under the Risk Management Fund created by Section 63A-4-201.

Section 8. Section **63H-5-108** is amended to read:

63H-5-108. Relation to certain acts.

(1) The authority is exempt from:

- (a) Title 51, Chapter 5, Funds Consolidation Act;
- (b) except as provided in Subsection (2)(b), Title 63A, Utah Administrative Services

Code;

~~[(c) Title 63G, Chapter 6a, Utah Procurement Code;]~~

~~[(d)]~~ (c) Title 63J, Chapter 1, Budgetary Procedures Act; and

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~~(e)~~ (d) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) The authority is subject to:

(a) Title 52, Chapter 4, Open and Public Meetings Act;

~~(a)~~ (b) Title 63A, Chapter 3, Part 4, Utah Public Finance Website; ~~and~~

(c) Title 63G, Chapter 2, Government Records Access and Management Act;

(d) Title 63G, Chapter 6a, Utah Procurement Code; and

~~(b)~~ (e) audit by the state auditor pursuant to Title 67, Chapter 3, Auditor, and by the legislative auditor general pursuant to Section 36-12-15.

Section 9. Section **63H-6-103** is amended to read:

63H-6-103. Utah State Fair Corporation -- Legal status -- Powers.

(1) There is created an independent public nonprofit corporation known as the "Utah State Fair Corporation."

(2) The board shall file articles of incorporation for the corporation with the Division of Corporations and Commercial Code.

(3) The corporation, subject to this chapter, has all powers and authority permitted nonprofit corporations by law.

(4) The corporation shall:

(a) manage, supervise, and control:

(i) all activities relating to the annual exhibition described in Subsection (4)(j); and

(ii) except as otherwise provided by statute, all state expositions, including setting the time, place, and purpose of any state exposition;

(b) for public entertainment, displays, and exhibits or similar events:

(i) provide, sponsor, or arrange the events;

(ii) publicize and promote the events; and

(iii) secure funds to cover the cost of the exhibits from:

(A) private contributions;

(B) public appropriations;

(C) admission charges; and

(D) other lawful means;

(c) acquire and designate exposition sites;

(d) use generally accepted accounting principles in accounting for the corporation's

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assets, liabilities, and operations;

(e) seek corporate sponsorships for the state fair park or for individual buildings or facilities within the fair park;

(f) work with county and municipal governments, the Salt Lake Convention and Visitor's Bureau, the Utah Travel Council, and other entities to develop and promote expositions and the use of the state fair park;

(g) develop and maintain a marketing program to promote expositions and the use of the state fair park;

(h) in accordance with provisions of this part, operate and maintain the state fair park, including the physical appearance and structural integrity of the state fair park and the buildings located at the state fair park;

(i) prepare an economic development plan for the state fair park;

(j) hold an annual exhibition that:

(i) is called the state fair or a similar name;

(ii) promotes and highlights agriculture throughout the state;

(iii) includes expositions of livestock, poultry, agricultural, domestic science, horticultural, floricultural, mineral and industrial products, manufactured articles, and domestic animals that, in the corporation's opinion will best stimulate agricultural, industrial, artistic, and educational pursuits and the sharing of talents among the people of Utah;

(iv) includes the award of premiums for the best specimens of the exhibited articles and animals;

(v) permits competition by livestock exhibited by citizens of other states and territories of the United States; and

(vi) is arranged according to plans approved by the board;

(k) fix the conditions of entry to the annual exhibition described in Subsection (4)(j);
and

(l) publish a list of premiums that will be awarded at the annual exhibition described in Subsection (4)(j) for the best specimens of exhibited articles and animals.

(5) In addition to the annual exhibition described in Subsection (4)(j), the corporation may hold other exhibitions of livestock, poultry, agricultural, domestic science, horticultural, floricultural, mineral and industrial products, manufactured articles, and domestic animals that,

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in the corporation's opinion, will best stimulate agricultural, industrial, artistic, and educational pursuits and the sharing of talents among the people of Utah.

(6) The corporation may:

(a) employ advisers, consultants, and agents, including financial experts and independent legal counsel, and fix their compensation;

(b) (i) participate in the state's Risk Management Fund created under Section 63A-4-201; or

(ii) procure insurance against any loss in connection with the corporation's property and other assets, including mortgage loans;

(c) receive and accept aid or contributions of money, property, labor, or other things of value from any source, including any grants or appropriations from any department, agency, or instrumentality of the United States or Utah;

(d) hold, use, loan, grant, and apply that aid and those contributions to carry out the purposes of the corporation, subject to the conditions, if any, upon which the aid and contributions were made;

(e) enter into management agreements with any person or entity for the performance of the corporation's functions or powers;

(f) establish whatever accounts and procedures as necessary to budget, receive, and disburse, account for, and audit all funds received, appropriated, or generated;

(g) subject to Subsection (8), lease any of the facilities at the state fair park;

(h) sponsor events as approved by the board; and

(i) enter into one or more agreements to develop the state fair park.

(7) (a) Except as provided in Subsection (7)(c), as an independent agency of Utah, the corporation is exempt from:

(i) Title 51, Chapter 5, Funds Consolidation Act;

(ii) Title 51, Chapter 7, State Money Management Act;

(iii) Title 63A, Utah Administrative Services Code;

~~[(iv) Title 63G, Chapter 6a, Utah Procurement Code;]~~

~~[(v)]~~ (iv) Title 63J, Chapter 1, Budgetary Procedures Act; and

~~[(vi)]~~ (v) Title 67, Chapter 19, Utah State Personnel Management Act.

(b) The board shall adopt policies parallel to and consistent with:

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- (i) Title 51, Chapter 5, Funds Consolidation Act;
- (ii) Title 51, Chapter 7, State Money Management Act;
- (iii) Title 63A, Utah Administrative Services Code; and
- ~~[(iv) Title 63G, Chapter 6a, Utah Procurement Code; and]~~
- ~~[(v)]~~ (iv) Title 63J, Chapter 1, Budgetary Procedures Act.

(c) The corporation shall comply with:

- (i) Title 52, Chapter 4, Open and Public Meetings Act;
- (ii) Title 63G, Chapter 2, Government Records Access and Management Act;
- ~~[(iii)]~~ (iii) the provisions of Title 63A, Chapter 3, Part 4, Utah Public Finance Website;

[~~and~~]

(iv) Title 63G, Chapter 6a, Utah Procurement Code, except for a procurement for:

(A) entertainment provided at the state fair park;

(B) judges for competitive exhibits; or

(C) sponsorship of an event at the state fair park; and

~~[(iii)]~~ (v) the legislative approval requirements for new facilities established in Subsection 63A-5-104(3).

(8) (a) Before the corporation executes a lease described in Subsection (6)(g) with a term of 10 or more years, the corporation shall:

(i) submit the proposed lease to the State Building Board for the State Building Board's approval or rejection; and

(ii) if the State Building Board approves the proposed lease, submit the proposed lease to the Executive Appropriations Committee for the Executive Appropriation Committee's review and recommendation in accordance with Subsection (8)(b).

(b) The Executive Appropriations Committee shall review a proposed lease submitted in accordance with Subsection (8)(a) and recommend to the corporation that the corporation:

(i) execute the proposed sublease; or

(ii) reject the proposed sublease.

Section 10. Section ~~{63H-7A-104}~~; 63H-7a-104 is enacted to read:

~~63H-7A-104~~; 63H-7a-104. **Relation to certain acts.**

(1) The authority is exempt from:

(a) Title 51, Chapter 5, Funds Consolidation Act;

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(b) except as provided in Subsection (2)(b), Title 63A, Utah Administrative Services

Code;

(c) Title 63J, Chapter 1, Budgetary Procedures Act; and

(d) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) The authority is subject to:

(a) Title 52, Chapter 4, Open and Public Meetings Act;

(b) Title 63A, Chapter 3, Part 4, Utah Public Finance Website;

(c) Title 63G, Chapter 2, Government Records Access and Management Act; and

(d) Title 63G, Chapter 6a, Utah Procurement Code.