

HB0297S01 compared with HB0297

~~deleted text~~ shows text that was in HB0297 but was deleted in HB0297S01.

inserted text shows text that was not in HB0297 but was inserted into HB0297S01.

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Representative Brad R. Wilson proposes the following substitute bill:

COLORADO RIVER AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad R. Wilson

Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill addresses Utah's management of Utah's Colorado River system interests.

Highlighted Provisions:

This bill:

- ▶ enacts the Colorado River Authority of Utah Act, including:
 - defining terms;
 - describing the scope of the chapter;
 - creating the authority;
 - providing for the organization and operation of the authority;
 - establishing the authority's powers and mission;
 - addressing creation of a management plan;
 - providing for rulemaking, reporting, and recordkeeping;

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- addressing authority meetings, including closure of meetings;
 - ~~{authorizing}~~ providing for authorized advisory councils;
 - authorizing consultations;
 - addressing application of certain state codes;
 - addressing the river commissioner and chair;
 - providing for employees, consultants, and other professionals, including an executive director; and
 - addressing financial operations including creating a restricted account;
- ▶ adapts implementation of the Colorado River Authority of Utah Act to existing law; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides revisor instructions.

Utah Code Sections Affected:

AMENDS:

52-4-205, as last amended by Laws of Utah 2020, Chapters 12 and 201

63G-2-305, as last amended by Laws of Utah 2020, Chapters 112, 198, 339, 349, 382, and 393

63G-6a-103, as last amended by Laws of Utah 2020, Chapters 152, 257, 365 and last amended by Coordination Clause, Laws of Utah 2020, Chapter 365

63G-6a-107.6, as enacted by Laws of Utah 2020, Chapter 257

63J-1-602.2, as last amended by Laws of Utah 2020, Fifth Special Session, Chapters 20 and 20

73-10-3, as last amended by Laws of Utah 1983, Chapter 320

73-10-4, as last amended by Laws of Utah 2020, Chapter 342

73-10-18, as last amended by Laws of Utah 2016, Chapter 58

ENACTS:

63M-14-101, Utah Code Annotated 1953

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63M-14-102, Utah Code Annotated 1953
63M-14-103, Utah Code Annotated 1953
63M-14-201, Utah Code Annotated 1953
63M-14-202, Utah Code Annotated 1953
63M-14-203, Utah Code Annotated 1953
63M-14-204, Utah Code Annotated 1953
63M-14-205, Utah Code Annotated 1953
63M-14-206, Utah Code Annotated 1953
63M-14-207, Utah Code Annotated 1953
63M-14-208, Utah Code Annotated 1953
63M-14-209, Utah Code Annotated 1953
63M-14-210, Utah Code Annotated 1953
63M-14-301, Utah Code Annotated 1953
63M-14-302, Utah Code Annotated 1953
63M-14-303, Utah Code Annotated 1953
63M-14-304, Utah Code Annotated 1953
63M-14-305, Utah Code Annotated 1953
63M-14-306, Utah Code Annotated 1953
63M-14-401, Utah Code Annotated 1953
63M-14-402, Utah Code Annotated 1953
63M-14-501, Utah Code Annotated 1953
63M-14-502, Utah Code Annotated 1953

Utah Code Sections Affected by Revisor Instructions:

63M-14-203, Utah Code Annotated 1953
63M-14-301, Utah Code Annotated 1953

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

Section 1. Section **52-4-205** is amended to read:

52-4-205. Purposes of closed meetings -- Certain issues prohibited in closed meetings.

(1) A closed meeting described under Section 52-4-204 may only be held for:

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(a) except as provided in Subsection (3), discussion of the character, professional competence, or physical or mental health of an individual;

(b) strategy sessions to discuss collective bargaining;

(c) strategy sessions to discuss pending or reasonably imminent litigation;

(d) strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares, if public discussion of the transaction would:

(i) disclose the appraisal or estimated value of the property under consideration; or

(ii) prevent the public body from completing the transaction on the best possible terms;

(e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares, if:

(i) public discussion of the transaction would:

(A) disclose the appraisal or estimated value of the property under consideration; or

(B) prevent the public body from completing the transaction on the best possible terms;

(ii) the public body previously gave public notice that the property would be offered for sale; and

(iii) the terms of the sale are publicly disclosed before the public body approves the sale;

(f) discussion regarding deployment of security personnel, devices, or systems;

(g) investigative proceedings regarding allegations of criminal misconduct;

(h) as relates to the Independent Legislative Ethics Commission, conducting business relating to the receipt or review of ethics complaints;

(i) as relates to an ethics committee of the Legislature, a purpose permitted under Subsection 52-4-204(1)(a)(iii)(C);

(j) as relates to the Independent Executive Branch Ethics Commission created in Section 63A-14-202, conducting business relating to an ethics complaint;

(k) as relates to a county legislative body, discussing commercial information as defined in Section 59-1-404;

(l) as relates to the Utah Higher Education Assistance Authority and its appointed board of directors, discussing fiduciary or commercial information as defined in Section 53B-12-102;

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(m) deliberations, not including any information gathering activities, of a public body acting in the capacity of:

(i) an evaluation committee under Title 63G, Chapter 6a, Utah Procurement Code, during the process of evaluating responses to a solicitation, as defined in Section 63G-6a-103;

(ii) a protest officer, defined in Section 63G-6a-103, during the process of making a decision on a protest under Title 63G, Chapter 6a, Part 16, Protests; or

(iii) a procurement appeals panel under Title 63G, Chapter 6a, Utah Procurement Code, during the process of deciding an appeal under Title 63G, Chapter 6a, Part 17, Procurement Appeals Board;

(n) the purpose of considering information that is designated as a trade secret, as defined in Section 13-24-2, if the public body's consideration of the information is necessary in order to properly conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code;

(o) the purpose of discussing information provided to the public body during the procurement process under Title 63G, Chapter 6a, Utah Procurement Code, if, at the time of the meeting:

(i) the information may not, under Title 63G, Chapter 6a, Utah Procurement Code, be disclosed to a member of the public or to a participant in the procurement process; and

(ii) the public body needs to review or discuss the information in order to properly fulfill its role and responsibilities in the procurement process;

(p) as relates to the governing board of a governmental nonprofit corporation, as that term is defined in Section 11-13a-102, the purpose of discussing information that is designated as a trade secret, as that term is defined in Section 13-24-2, if:

(i) public knowledge of the discussion would reasonably be expected to result in injury to the owner of the trade secret; and

(ii) discussion of the information is necessary for the governing board to properly discharge the board's duties and conduct the board's business; or

(q) a purpose for which a meeting is required to be closed under Subsection (2).

(2) The following meetings shall be closed:

(a) a meeting of the Health and Human Services Interim Committee to review a fatality review report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4);

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(b) a meeting of the Child Welfare Legislative Oversight Panel to:

(i) review a fatality review report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4); or

(ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5);

(c) a meeting of the Opioid and Overdose Fatality Review Committee, created in Section 26-7-13, to review and discuss an individual case, as described in Subsection 26-7-13(10); [~~and~~]

(d) a meeting of a conservation district as defined in Section 17D-3-102 for the purpose of advising the Natural Resource Conservation Service of the United States Department of Agriculture on a farm improvement project if the discussed information is protected information under federal law; [~~and~~]

(e) a meeting of the Compassionate Use Board established in Section 26-61a-105 for the purpose of reviewing petitions for a medical cannabis card in accordance with Section 26-61a-105[-]; and

(f) a meeting of the Colorado River Authority of Utah ~~{for}~~ if:

(i) the purpose of ~~{maintaining confidential information concerning}~~ the meeting is to discuss an interstate claim to the use of the water in the Colorado River system ~~{in a judicial proceeding, administrative proceeding, or negotiation with a representative from}~~; and

(ii) failing to close the meeting would:

(A) reveal the contents of a record classified as protected under Subsection 63G-2-305(82);

(B) reveal a legal strategy relating to the state's claim to the use of the water in the Colorado River system;

(C) harm the ability of the Colorado River Authority of Utah to negotiate the best terms and conditions regarding the use of water in the Colorado River system; or

(D) give an advantage to another state or to the federal government ~~{as provided}~~ in negotiations regarding the use of water in ~~{Section 63M-14-208}~~ the Colorado River system.

(3) In a closed meeting, a public body may not:

(a) interview a person applying to fill an elected position;

(b) discuss filling a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office;

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or

(c) discuss the character, professional competence, or physical or mental health of the person whose name was submitted for consideration to fill a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office.

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

63G-2-305. Protected records.

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

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

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

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

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

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

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

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

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

(6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this

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Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties:

(a) a bid, proposal, application, or other information submitted to or by a governmental entity in response to:

- (i) an invitation for bids;
- (ii) a request for proposals;
- (iii) a request for quotes;
- (iv) a grant; or
- (v) other similar document; or

(b) an unsolicited proposal, as defined in Section 63G-6a-712;

(7) information submitted to or by a governmental entity in response to a request for information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict the right of a person to have access to the information, after:

(a) a contract directly relating to the subject of the request for information has been awarded and signed by all parties; or

(b) (i) a final determination is made not to enter into a contract that relates to the subject of the request for information; and

(ii) at least two years have passed after the day on which the request for information is issued;

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

(a) public interest in obtaining access to the information is greater than or equal to the governmental entity's need to acquire the property on the best terms possible;

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

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

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

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

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

(a) the public interest in access is greater than or equal to the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

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

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

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

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

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

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

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

(11) records the disclosure of which would jeopardize the life or safety of an individual;

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

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

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

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

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

(17) records that are subject to the attorney client privilege;

(18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;

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

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

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

(A) members of a legislative body;

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

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

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

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

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

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

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about:

(a) collective bargaining; or

(b) imminent or pending litigation;

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

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

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

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

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students

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admitted, may not be classified as protected under this section;

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

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

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

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

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

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

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

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

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

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the donor, provided that:

(a) the donor requests anonymity in writing;

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

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

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

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

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

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

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

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

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

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

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

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that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

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

(a) a production facility; or

(b) a magazine;

(43) information:

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

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

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

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

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

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

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of Emergency Management, and the disclosure of which would jeopardize:

(a) the safety of the general public; or

(b) the security of:

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- (i) governmental property;
- (ii) governmental programs; or
- (iii) the property of a private person who provides the Division of Emergency

Management information;

(49) records of the Department of Agriculture and Food that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control of Animal Disease;

(50) as provided in Section 26-39-501:

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

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

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

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

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

- (i) the nature of the law, ordinance, rule, or order; and
- (ii) the individual complying with the law, ordinance, rule, or order;

(52) the portion of the following documents that contains a candidate's residential or mailing address, if the candidate provides to the filing officer another address or phone number where the candidate may be contacted:

(a) a declaration of candidacy, a nomination petition, or a certificate of nomination, described in Section 20A-9-201, 20A-9-202, 20A-9-203, 20A-9-404, 20A-9-405, 20A-9-408, 20A-9-408.5, 20A-9-502, or 20A-9-601;

(b) an affidavit of impecuniosity, described in Section 20A-9-201; or

(c) a notice of intent to gather signatures for candidacy, described in Section

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20A-9-408;

(53) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(54) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation Commission concerning an individual commissioner's vote on whether or not to recommend that the voters retain a judge including information disclosed under Subsection 78A-12-203(5)(e);

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

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

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

(58) information requested by and provided to the 911 Division under Section 63H-7a-302;

(59) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality;

(60) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63A-13-201:

(a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied

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upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;

(b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;

(c) before the time that an investigation or audit is completed and the final investigation or final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for the person's response or information;

(d) records that would disclose an outline or part of any investigation, audit survey plan, or audit program; or

(e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or audit;

(61) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or abuse;

(62) information provided to the Department of Health or the Division of Occupational and Professional Licensing under Subsections 58-67-304(3) and (4) and Subsections 58-68-304(3) and (4);

(63) a record described in Section 63G-12-210;

(64) captured plate data that is obtained through an automatic license plate reader system used by a governmental entity as authorized in Section 41-6a-2003;

(65) any record in the custody of the Utah Office for Victims of Crime relating to a victim, including:

(a) a victim's application or request for benefits;

(b) a victim's receipt or denial of benefits; and

(c) any administrative notes or records made or created for the purpose of, or used to, evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim Reparations Fund;

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(66) an audio or video recording created by a body-worn camera, as that term is defined in Section 77-7a-103, that records sound or images inside a hospital or health care facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care provider, as that term is defined in Section 78B-3-403, or inside a human service program as that term is defined in Section 62A-2-101, except for recordings that:

(a) depict the commission of an alleged crime;

(b) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;

(c) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;

(d) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(f); or

(e) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording;

(67) a record pertaining to the search process for a president of an institution of higher education described in Section 53B-2-102, except for application materials for a publicly announced finalist;

(68) an audio recording that is:

(a) produced by an audio recording device that is used in conjunction with a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition;

(b) produced during an emergency event when an individual employed to provide law enforcement, fire protection, paramedic, emergency medical, or other first responder service:

(i) is responding to an individual needing resuscitation or with a life-threatening condition; and

(ii) uses a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition; and

(c) intended and used for purposes of training emergency responders how to improve their response to an emergency situation;

(69) records submitted by or prepared in relation to an applicant seeking a recommendation by the Research and General Counsel Subcommittee, the Budget

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Subcommittee, or the Audit Subcommittee, established under Section 36-12-8, for an employment position with the Legislature;

(70) work papers as defined in Section 31A-2-204;

(71) a record made available to Adult Protective Services or a law enforcement agency under Section 61-1-206;

(72) a record submitted to the Insurance Department in accordance with Section 31A-37-201 or 31A-22-653;

(73) a record described in Section 31A-37-503[-];

(74) any record created by the Division of Occupational and Professional Licensing as a result of Subsection 58-37f-304(5) or 58-37f-702(2)(a)(ii);

(75) a record described in Section 72-16-306 that relates to the reporting of an injury involving an amusement ride;

(76) except as provided in Subsection 63G-2-305.5(1), the signature of an individual on a political petition, or on a request to withdraw a signature from a political petition, including a petition or request described in the following titles:

(a) Title 10, Utah Municipal Code;

(b) Title 17, Counties;

(c) Title 17B, Limited Purpose Local Government Entities - Local Districts;

(d) Title 17D, Limited Purpose Local Government Entities - Other Entities; and

(e) Title 20A, Election Code;

(77) except as provided in Subsection 63G-2-305.5(2), the signature of an individual in a voter registration record;

(78) except as provided in Subsection 63G-2-305.5(3), any signature, other than a signature described in Subsection (76) or (77), in the custody of the lieutenant governor or a local political subdivision collected or held under, or in relation to, Title 20A, Election Code;

(79) a Form I-918 Supplement B certification as described in Title 77, Chapter 38, Part 5, Victims Guidelines for Prosecutors Act;

(80) a record submitted to the Insurance Department under Subsection 31A-47-103(1)(b); [~~and~~]

(81) personal information, as defined in Section 63G-26-102, to the extent disclosure is prohibited under Section 63G-26-103[-]; and

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(82) a record concerning an interstate claim to the use of waters in the Colorado River system in a judicial proceeding, administrative proceeding, or negotiation with a representative from another state or the federal government as provided in Section 63M-14-205.

Section 3. Section **63G-6a-103** is amended to read:

63G-6a-103. Definitions.

As used in this chapter:

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

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

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

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

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

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

(7) "Building board" means the State Building Board, created in Section 63A-5b-201.

(8) "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.

(9) "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.

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

(11) "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

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(b) including:

(i) preparing any solicitation document;

(ii) appointing an evaluation committee;

(iii) conducting the evaluation process, except the process relating to scores calculated for costs of proposals;

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

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

(vi) contract administration.

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

(13) "Construction project":

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

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

(14) "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.

(15) "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

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

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

(17) "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;

(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.

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

(19) "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.

(20) "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.

(21) "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.

(22) "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.

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

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(24) "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.

(25) "Design professional" means:

- (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects Licensing Act;
- (b) an individual licensed as a professional engineer or professional land surveyor under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act; or
- (c) an individual certified as a commercial interior designer under Title 58, Chapter 86, State Certification of Commercial Interior Designers Act.

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

(27) "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;
- (c) master planning and programming services; or
- (d) services within the scope of the practice of commercial interior design, as defined in Section 58-86-102.

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

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

(30) "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 the 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.

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(31) "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.

(32) (a) "Executive branch procurement unit" means a department, division, office, bureau, agency, or other organization within the state executive branch.

(b) "Executive branch procurement unit" does not include the Colorado River Authority of Utah as provided in Section 63M-14-210.

(33) "Facilities division" means the Division of Facilities Construction and Management, created in Section 63A-5b-301.

(34) "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.

(35) "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.

(36) "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.

(37) "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,

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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 procurement official reasonably considers to be immaterial.

(38) "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.

(39) "Independent procurement unit" means:

(a) (i) a legislative procurement unit;

(ii) a judicial branch procurement unit;

(iii) an educational procurement unit;

(iv) a local government procurement unit;

(v) a conservation district;

(vi) a local building authority;

(vii) a local district;

(viii) a public corporation;

(ix) a special service district; or

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

(b) the building board or the facilities division, but only to the extent of the procurement authority provided under Title 63A, Chapter 5b, Administration of State Facilities;

(c) the attorney general, but only to the extent of the procurement authority provided under Title 67, Chapter 5, Attorney General;

(d) the Department of Transportation, but only to the extent of the procurement authority provided under Title 72, Transportation Code; or

(e) any other executive branch department, division, office, or entity that has statutory

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procurement authority outside this chapter, but only to the extent of that statutory procurement authority.

(40) "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 (40)(a).

(41) "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.

(42) "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.

(43) "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.

(44) "Legislative procurement unit" means:

(a) the Legislature;

(b) the Senate;

(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;

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(B) the membership of which includes legislators; and

(C) for which the Office of Legislative Research and General Counsel provides staff support.

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

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

(47) "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.

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

(49) "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.

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

(51) "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 (51)(a).

(52) "Offeror" means a person who submits a proposal in response to a request for proposals.

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

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

(55) "Procurement" means the acquisition of a procurement item through an

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expenditure of public funds, or an agreement to expend public funds, including an acquisition through a public-private partnership.

(56) "Procurement item" means an item of personal property, a technology, a service, or a construction project.

(57) "Procurement official" means:

(a) for a procurement unit other than an independent procurement unit, the chief procurement officer;

(b) for a legislative procurement unit, the individual, individuals, or body designated in a policy adopted by the Legislative Management Committee;

(c) for a judicial procurement unit, the Judicial Council or an individual or body 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) an individual or body designated by the local government procurement unit;

(e) for a local district, the board of trustees of the local district or the board of trustees' designee;

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

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

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

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

(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 designee of the individual or body;

(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 the State Board of Education, the State Board of Education or the State Board

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of Education's designee;

(n) for the Utah Board of Higher Education, the Commissioner of Higher Education or the designee of the Commissioner of Higher Education;

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

(p) (i) for the building board, and only to the extent of procurement activities of the building board as an independent procurement unit under the procurement authority provided under Title 63A, Chapter 5b, Administration of State Facilities, the director of the building board or the director's designee;

(ii) for the facilities division, and only to the extent of procurement activities of the facilities division as an independent procurement unit under the procurement authority provided under Title 63A, Chapter 5b, Administration of State Facilities, the director of the facilities division or the director's designee;

(iii) for the attorney general, and only to the extent of procurement activities of the attorney general as an independent procurement unit under the procurement authority provided under Title 67, Chapter 5, Attorney General, the attorney general or the attorney general's designee;

(iv) for the Department of Transportation created in Section 72-1-201, and only to the extent of procurement activities of the Department of Transportation as an independent procurement unit under the procurement authority provided under Title 72, Transportation Code, the executive director of the Department of Transportation or the executive director's designee; or

(v) for any other executive branch department, division, office, or entity that has statutory procurement authority outside this chapter, and only to the extent of the procurement activities of the department, division, office, or entity as an independent procurement unit under the procurement authority provided outside this chapter for the department, division, office, or entity, the chief executive officer of the department, division, office, or entity or the chief executive officer's designee.

(58) "Procurement unit":

(a) means:

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- (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;
 - (vii) a local district;
 - (viii) a special service district;
 - (ix) a local building authority;
 - (x) a conservation district;
 - (xi) a public corporation; and
- (b) does not include a political subdivision created under Title 11, Chapter 13,

Interlocal Cooperation Act.

(59) "Professional service" means labor, effort, or work that requires specialized knowledge, expertise, 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.

(60) "Protest officer" means:

- (a) for the division or an independent procurement unit:
 - (i) the procurement official;
 - (ii) the procurement official's designee who is an employee of the procurement unit; or
 - (iii) a person designated by rule made by the rulemaking authority; or

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(b) for a procurement unit other than an independent procurement unit, the chief procurement officer or the chief procurement officer's designee who is an employee of the division.

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

(62) "Public entity" means the state or any other government entity within the state that expends public funds.

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

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

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

(66) "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.

(67) "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.

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

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

(70) "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.

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

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(72) "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.

(73) "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.

(74) "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.

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

(76) "Rule" includes a policy or regulation adopted by the rulemaking authority, if adopting a policy or regulation is the method the rulemaking authority uses to adopt provisions that govern the applicable procurement unit.

(77) "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 facilities division, the building board;

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

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

(D) for any other executive branch department, division, office, or entity that has statutory procurement authority outside this chapter, the governing authority of the department, division, office, or entity; and

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- (ii) for each other executive branch procurement unit, the board;
 - (d) for a local government procurement unit:
 - (i) the governing body of the local government unit; or
 - (ii) an individual or body designated by 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, the Utah Board of Higher Education;
 - (g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, 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, 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:
 - (i) with respect to a subject addressed by board rules; or
 - (ii) that are in addition to board rules;
 - (j) for the Utah Educational Savings Plan, created in Section 53B-8a-103, the Utah Board of Higher Education;
 - (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;
 - (m) for the Utah Communications Authority, established in Section 63H-7a-201, the Utah Communications Authority board, created in Section 63H-7a-203; or
 - (n) for any other procurement unit, the board.
- (78) "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.
- (79) "Small purchase process" means the procurement process described in Section

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63G-6a-506.

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

(81) "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.

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

(83) "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.

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

(85) "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.

(86) "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.

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

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

(89) "Subcontractor":

(a) means a person under contract to perform part of a contractual obligation under the

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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.

(90) "Technology" means the same as "information technology," as defined in Section 63F-1-102.

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

(92) "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.

(93) "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.

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(94) "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:

(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 4. Section **63G-6a-107.6** is amended to read:

63G-6a-107.6. Exemptions from chapter.

(1) Except for this Subsection (1), the provisions of this chapter do not apply to:

(a) a public entity's acquisition of a procurement item from another public entity; or

(b) a public entity that is not a procurement unit, including the Colorado River Authority of Utah as provided in Section 63M-14-210.

(2) Unless otherwise provided by statute and except for this Subsection (2), the provisions of this chapter do not apply to the acquisition or disposal of real property or an interest in real property.

(3) Except for this Subsection (3) and Part 24, Unlawful Conduct and Penalties, the provisions of this chapter do not apply to:

(a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art Act;

(b) a grant;

(c) medical supplies or medical equipment, including service agreements for medical equipment, obtained by the University of Utah Hospital through a purchasing consortium if:

(i) the consortium uses a competitive procurement process; and

(ii) the chief administrative officer of the hospital makes a written finding that the prices for purchasing medical supplies and medical equipment through the consortium are competitive with market prices;

(d) the purchase of firefighting supplies or equipment by the Division of Forestry, Fire, and State Lands, created in Section 65A-1-4, through the federal General Services

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Administration or the National Fire Cache system;

(e) supplies purchased for resale to the public; or

(f) activities related to the management of investments by a public entity granted investment authority by law.

(4) This chapter does not supersede the requirements for retention or withholding of construction proceeds and release of construction proceeds as provided in Section 13-8-5.

(5) Except for this Subsection (5), the provisions of this chapter do not apply to a procurement unit's hiring a mediator, arbitrator, or arbitration panel member to participate in the procurement unit's dispute resolution efforts.

Section 5. Section **63J-1-602.2** is amended to read:

63J-1-602.2. List of nonlapsing appropriations to programs.

Appropriations made to the following programs are nonlapsing:

(1) The Legislature and the Legislature's committees.

(2) The State Board of Education, including all appropriations to agencies, line items, and programs under the jurisdiction of the State Board of Education, in accordance with Section 53F-9-103.

(3) The Percent-for-Art Program created in Section 9-6-404.

(4) The LeRay McAllister Critical Land Conservation Program created in Section 11-38-301.

(5) Dedicated credits accrued to the Utah Marriage Commission as provided under Subsection 17-16-21(2)(d)(ii).

(6) The Trip Reduction Program created in Section 19-2a-104.

(7) The Division of Wildlife Resources for the appraisal and purchase of lands under the Pelican Management Act, as provided in Section 23-21a-6.

(8) The emergency medical services grant program in Section 26-8a-207.

(9) The primary care grant program created in Section 26-10b-102.

(10) Sanctions collected as dedicated credits from Medicaid provider under Subsection 26-18-3(7).

(11) The Utah Health Care Workforce Financial Assistance Program created in Section 26-46-102.

(12) The Rural Physician Loan Repayment Program created in Section 26-46a-103.

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- (13) The Opiate Overdose Outreach Pilot Program created in Section 26-55-107.
- (14) Funds that the Department of Alcoholic Beverage Control retains in accordance with Subsection 32B-2-301(8)(a) or (b).
- (15) The General Assistance program administered by the Department of Workforce Services, as provided in Section 35A-3-401.
- (16) A new program or agency that is designated as nonlapsing under Section 36-24-101.
- (17) The Utah National Guard, created in Title 39, Militia and Armories.
- (18) The State Tax Commission under Section 41-1a-1201 for the:
 - (a) purchase and distribution of license plates and decals; and
 - (b) administration and enforcement of motor vehicle registration requirements.
- (19) The Search and Rescue Financial Assistance Program, as provided in Section 53-2a-1102.
- (20) The Motorcycle Rider Education Program, as provided in Section 53-3-905.
- (21) The Utah Board of Higher Education for teacher preparation programs, as provided in Section 53B-6-104.
- (22) The Medical Education Program administered by the Medical Education Council, as provided in Section 53B-24-202.
- (23) The Division of Services for People with Disabilities, as provided in Section 62A-5-102.
- (24) The Division of Fleet Operations for the purpose of upgrading underground storage tanks under Section 63A-9-401.
- (25) The Utah Seismic Safety Commission, as provided in Section 63C-6-104.
- (26) Appropriations to the Department of Technology Services for technology innovation as provided under Section 63F-4-202.
- (27) The Office of Administrative Rules for publishing, as provided in Section 63G-3-402.
- (28) The Colorado River Authority of Utah, created in Title 63M, Chapter 14, Colorado River Authority of Utah Act.
- ~~(28)~~ (29) The Governor's Office of Economic Development to fund the Enterprise Zone Act, as provided in Title 63N, Chapter 2, Part 2, Enterprise Zone Act.

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~~[(29)]~~ (30) Appropriations to fund the Governor's Office of Economic Development's Rural Employment Expansion Program, as described in Title 63N, Chapter 4, Part 4, Rural Employment Expansion Program.

~~[(30)]~~ (31) Appropriations to fund programs for the Jordan River Recreation Area as described in Section 65A-2-8.

~~[(31)]~~ (32) The Department of Human Resource Management user training program, as provided in Section 67-19-6.

~~[(32)]~~ (33) A public safety answering point's emergency telecommunications service fund, as provided in Section 69-2-301.

~~[(33)]~~ (34) The Traffic Noise Abatement Program created in Section 72-6-112.

~~[(34)]~~ (35) The Judicial Council for compensation for special prosecutors, as provided in Section 77-10a-19.

~~[(35)]~~ (36) A state rehabilitative employment program, as provided in Section 78A-6-210.

~~[(36)]~~ (37) The Utah Geological Survey, as provided in Section 79-3-401.

~~[(37)]~~ (38) The Bonneville Shoreline Trail Program created under Section 79-5-503.

~~[(38)]~~ (39) Adoption document access as provided in Sections 78B-6-141, 78B-6-144, and 78B-6-144.5.

~~[(39)]~~ (40) Indigent defense as provided in Title 78B, Chapter 22, Part 4, Utah Indigent Defense Commission.

~~[(40)]~~ (41) The program established by the Division of Facilities Construction and Management under Section 63A-5b-703 under which state agencies receive an appropriation and pay lease payments for the use and occupancy of buildings owned by the Division of Facilities Construction and Management.

Section 6. Section **63M-14-101** is enacted to read:

CHAPTER 14. COLORADO RIVER AUTHORITY OF UTAH ACT

Part 1. General Provisions

63M-14-101. Title.

This chapter is known as the "Colorado River Authority of Utah Act."

Section 7. Section **63M-14-102** is enacted to read:

63M-14-102. ~~{ }~~ Definitions.

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As used in this chapter:

(1) "Appointing authority" means an authority named in Section 63M-14-202 that appoints an authority member for a Colorado River authority area.

(2) "Authority" means the Colorado River Authority of Utah created by Section 63M-14-201.

(3) "Authority member" means a person appointed as a member of the authority under Section 63M-14-202 or designated as a member of the authority.

(4) "Chair" means the chair of the authority.

(5) "Colorado River Basin States" means Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming.

(6) "Colorado River authority area" means the geographic area designated by Subsection 63M-14-202(2).

(7) "Colorado River system" means the entire drainage of the Colorado River in Utah including both the main stem of the Colorado River and the Colorado River's tributaries.

(8) "Law of the river" means the compacts, federal laws, treaties, court decisions and decrees, contracts, and regulatory guidelines that underlie and authorize the management and operation of the Colorado River.

(9) "Restricted account" means the Colorado River Authority Restricted Account created in Section 63M-14-501.

(10) "River commissioner" means the person appointed under Section 63M-14-301.

Section 8. Section **63M-14-103** is enacted to read:

63M-14-103. f-h Scope of chapter.

(1) This chapter may not be interpreted to override, supersede, or modify any water right within the state, or the role and authority of the state engineer.

(2) The Division of Water Resources shall coordinate with the authority and river commissioner in the implementation of this chapter.

Section 9. Section **63M-14-201** is enacted to read:

Part 2. Authority

63M-14-201. f-h Authority created.

There is created within the governor's office the Colorado River Authority of Utah.

Section 10. Section **63M-14-202** is enacted to read:

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63M-14-202. Organization of the authority.

(1) The authority is composed of six authority members:

(a) five authority members who represent Colorado River authority areas; and

(b) one authority member who represents the governor.

(2) The five Colorado River authority areas, defined by existing county boundaries that reflect the historic and current use of the Colorado River system, include:

(a) the Central Utah Area composed of Salt Lake, Utah, Juab, Sanpete, Summit, Wasatch, Duchesne, and Uintah counties, located within the service area of the Central Utah Water Conservancy District;

(b) the Uintah Basin Area composed of Duchesne and Uintah counties, notwithstanding that these counties fall within the Central Utah Area;

(c) the Price and San Rafael Area composed of Carbon and Emery Counties;

(d) the Virgin River Area composed of Kane and Washington Counties; and

(e) the State of Utah Area that represents:

(i) the remaining counties using the Colorado River system;

(ii) the Department of Natural Resources and the Department of Natural Resources' divisions; and

(iii) the users of the Colorado River system that are not specifically included in the other four Colorado River authority areas and include Daggett, Garfield, Grand, San Juan, and Wayne Counties.

(3) The members of the authority are:

(a) four members appointed as follows:

(i) a representative of the Central Utah Area appointed by the board of trustees of the Central Utah Water Conservancy District;

(ii) a representative of the Uintah Basin Area appointed jointly by the boards of trustees of the Duchesne County and Uintah Water Conservancy Districts;

(iii) a representative of the Price and San Rafael Area appointed jointly by the county commission of Carbon County and the board of trustees of the Emery Water Conservancy District; and

(iv) a representative of the Virgin River Area appointed by the board of trustees of the Washington County Water Conservancy District;

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(b) the director of the Division of Water Resources as the representative of the State of Utah Area created in Subsection (2)(e); and

(c) the executive director of the Department of Natural Resources as the representative of the governor.

(4) A joint appointment required under Subsection (3) requires the agreement of both appointing authorities before the authority member seat is filled.

(5) An authority member who is appointed under Subsection (3) shall:

(a) be a resident of the state; and

(b) have experience and a general knowledge of:

(i) Colorado River issues and the use of the Colorado River system in the member's respective Colorado River authority area;

(ii) the development of the use of the waters of the Colorado River system; and

(iii) the rights of this state concerning the resources and benefits of the Colorado River system.

(6) (a) An appointing authority shall notify the chair of:

(i) the appointing authority's initial appointment to the authority on or before July 1, 2021; and

(ii) the appointment of a new member or when a vacancy is being filled.

(b) An appointment of an authority member is effective when received by the chair.

(c) The initial term of an appointed authority member expires June 30, 2027. Before June 30, 2027, the authority shall adopt a system to stagger the terms of appointed authority members beginning July 1, 2027, and notify each appointing authority of the duration of the term of the appointing authority's authority member. The staggering of terms after July 1, 2027, shall result in approximately one-third of the appointed authority members' terms expiring every two years. After the respective terms of adjustment are complete, subsequent authority members shall be appointed by an appointing authority for six-year terms.

(d) An authority member term shall end on June 30. New terms commence on July 1.

(e) An authority member whose term has expired shall serve until replaced or reappointed by the applicable appointing authority.

(f) An appointing authority may at any time remove the appointing authority's authority member for neglect of duty or malfeasance in office. If the authority member is jointly

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appointed, the authority member may only be removed by joint agreement of both appointing authorities.

(7) In the event of a vacancy in the authority, the chair shall notify the appointing authority of the vacancy and ask that an authority member be promptly appointed.

(8) (a) An authority member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Department of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(b) If an authority member is a full-time employee with either the state or a water conservancy district, the authority member is not eligible for the per diem compensation.

(9) The executive director appointed under Section 63M-14-401 shall provide staff services to the authority.

Section 11. Section **63M-14-203** is enacted to read:

63M-14-203. Authority operation -- Participation of the Department of Natural Resources.

(1) An authority member has one vote on authority matters.

(2) (a) Four members of the authority constitute a quorum to conduct authority business.

(b) A vote of four members is needed to pass authority business.

(3) (a) (i) The river commissioner appointed by the governor before the effective date of this bill shall serve as the chair of the authority until June 30, 2027, if the river commissioner is a member of the authority.

(ii) Beginning on July 1, 2027, the river commissioner shall be appointed under Section 63M-14-301 and shall serve as chair of the authority for a term of six years in accordance with Section 63M-14-302.

(b) The authority may elect other officers such as vice chair, secretary, and treasurer.

(c) The chair, vice chair, secretary, and treasurer are required to be authority members.

(d) Other officers of the authority are not required to be authority members. The authority shall adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative

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Rulemaking Act, for job responsibilities and terms of offices for the officers appointed under this Subsection (3)(d).

(e) If an authority officer no longer serves as an officer of the authority, the authority shall fill the vacancy for the unexpired term of the officer who is no longer serving.

(4) (a) The Department of Natural Resources shall cooperate with the authority.

(b) At the request of the authority, the executive director of the Department of Natural Resources shall:

(i) provide to the authority data or information collected by the Department of Natural Resources; and

(ii) ensure that the Department of Natural Resources present information to the authority.

Section 12. Section **63M-14-204** is enacted to read:

63M-14-204. Authority's general powers and mission -- Management plan.

(1) The authority may advise, support, gather information, and provide input to the river commissioner.

(2) The mission of the authority is to protect, conserve, use, and develop Utah's waters of the Colorado River system.

(3) The authority may develop a management plan to ensure that Utah can protect and develop the Colorado River system and to work to ensure that Utah can live within the state's apportionment of the Colorado River system.

Section 13. Section **63M-14-205** is enacted to read:

63M-14-205. Records.

(1) The records of the authority and the river commissioner shall be maintained by the authority.

(2) The authority may ~~{designate as protected under}~~ **classify a record in accordance with** Title 63G, Chapter 2, Government Access and Management Act, **including** a record ~~{concerning an interstate claim to the use of waters in the Colorado River system in a judicial proceeding, administrative proceeding, or negotiation with a representative from other states or the federal government}~~ **described in Subsection 63G-2-305(82).**

Section 14. Section **63M-14-206** is enacted to read:

63M-14-206. Adoption of rules.

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The authority may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, adopt rules when expressly authorized by this chapter.

Section 15. Section **63M-14-207** is enacted to read:

63M-14-207. Reports.

(1) The authority shall prepare an annual report of the authority's and river commissioner's activities and submit the report to the following:

- (a) the governor, and
- (b) the Legislative Management Committee.

(2) The authority shall respond to and participate in meetings as requested by a legislative committee or by the governor.

Section 16. Section **63M-14-208** is enacted to read:

63M-14-208. Authority meetings.

~~{(1)} The authority shall comply with Title 52, Chapter 4, Open and Public Meetings Act, in holding meetings.~~

~~{(2) The authority may hold a closed meeting following the procedures of Sections 52-4-204, 52-4-205, and 52-4-206 to maintain confidential information concerning an interstate claim to the use of the water in the Colorado River system in a judicial proceeding, administrative proceeding, or negotiation with a representative from another state or the federal government.~~

~~—~~ }Section 17. Section **63M-14-209** is enacted to read:

63M-14-209. Advisory councils authorized -- Consultations.

~~(1) (a) The authority may create authorized advisory councils of interested persons for consultations with the authority.~~

~~(b) The authority shall, by no later than December 31, 2021, make rules governing:~~

- ~~(i) authorized advisory councils;~~
- ~~(ii) authorized advisory council members;~~
- ~~(iii) authorized advisory council leadership; and~~
- ~~(iv) authorized topic areas of interest for each authorized advisory council that directly~~

~~relate to the mission and objectives of the authority.~~

~~(c) The authority may consult with authorized advisory councils and consider data, information, and input from these authorized advisory councils relevant to the mission and~~

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objectives of the authority.

(2) The authority may consult with relevant watershed councils created under Title 73, Chapter 10g, Part 3, Watershed Councils Act.

Section 18. Section **63M-14-210** is enacted to read:

63M-14-210. Application of state laws.

(1) (a) The authority is not an executive branch procurement unit under Title 63G, Chapter 6a, Utah Procurement Code, and is not subject to that chapter.

(b) The authority shall make by rule a procurement procedure substantially similar to Title 63G, Chapter 6a, Utah Procurement Code, or a procurement code adopted by an appointing authority.

(c) The authority may contract with an appointing authority that has a local procurement procedure to deal with procurement in manner consistent with the rules made under Subsection (1)(b).

(2) (a) The authority shall comply with Title 67, Chapter 19, Utah State Personnel Management Act, except as provided in this Subsection (2).

(b) (i) The authority may approve, upon recommendation of the chair, that exemption for specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required to enable the authority to efficiently fulfill the authority's responsibilities under the law.

(ii) The chair shall consult with the executive director of the Department of Human Resource Management before making a recommendation under Subsection (2)(b)(i).

(iii) The position of executive director is exempt under Subsections 67-19-12(2) and 67-19-15(1).

(c) (i) The executive director shall set salaries for exempted positions, except for the executive director, after consultation with the executive director of the Department of Human Resource Management, within ranges approved by the authority. The chair shall set the salary of the executive director.

(ii) The authority and executive director shall consider salaries for similar positions in private enterprise and other public employment when setting salary ranges.

Section 19. Section **63M-14-301** is enacted to read:

Part 3. River Commissioner

63M-14-301. Appointment of river commissioner.

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(1) (a) If the governor appoints the river commissioner before the effective date of this bill, that appointment expires on June 30, 2027.

(b) If the river commissioner appointed by the governor is also appointed as a member of the authority, the river commissioner shall serve as the chair of the authority for a term expiring June 30, 2027.

(c) After June 30, 2027, the authority shall elect a chair, who shall also serve, subject to the approval of the governor, as the river commissioner.

(2) The term of a river commissioner runs concurrently with the term of the chair as provided in Sections 63M-14-203 and 63M-14-302.

(3) If the river commissioner no longer serves as river commissioner, the authority shall fill the vacancy in accordance with Section 63M-14-203.

(4) Notwithstanding Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, a river commissioner may hold another government position at the same time as being a river commissioner without creating a conflict of interest.

Section 20. Section **63M-14-302** is enacted to read:

63M-14-302. Term -- Removal of river commissioner.

(1) The term of the river commissioner is six years.

(2) The authority, with the consent of the governor, may remove the river commissioner if the authority finds that the river commissioner has engaged in neglect of duty or malfeasance in office. If the river commissioner is removed under this Subsection (2), the removed river commissioner may not serve as chair of the authority or as a member of the authority.

Section 21. Section **63M-14-303** is enacted to read:

63M-14-303. Compensation.

The river commissioner shall serve without compensation, but may receive travel expenses in accordance with:

(1) Section 63A-3-107; and

(2) rules made by the Division of Finance pursuant to Section 63A-3-107.

Section 22. Section **63M-14-304** is enacted to read:

63M-14-304. Duties and powers.

(1) Before legal action on behalf of the state or the users of the waters of the Colorado

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River system may be taken under this chapter, the river commissioner shall request that the governor and attorney general take legal action on behalf of the state and the users of the waters of the Colorado River system to assure, conserve, protect, and preserve Utah's allocation of the waters of the Colorado River system as authorized by the law of the river.

(2) Except as provided in Section 63M-14-402, the attorney general shall represent the river commissioner and the authority, including the authority's members and officers, in all matters related to the Colorado River. At the request of the authority or the river commissioner, the attorney general may institute or join legal actions against any party to enforce or defend the state's rights in matters related to the Colorado River.

(3) The river commissioner shall act for the state and the Utah Colorado River users in consultations or negotiations with:

- (a) the Upper Colorado River Commission;
- (b) the states in the Colorado River Compact; and
- (c) the government of the United States.

(4) The river commissioner may make and enter into a compact between Utah and Colorado River Basin States, either jointly or severally. A compact that defines the rights of the states or of the United States in the waters of the Colorado River system is not binding on Utah until ratified and approved by:

- (a) the Utah State Legislature by joint resolution;
- (b) the governor of this state; and
- (c) the appropriate federal agency when the federal agency's approval is required.

(5) The river commissioner within the limits of the river commissioner's authority shall:

(a) represent and act for the state in consultation with other states, the United States, foreign countries, and private persons, and negotiate and enter into agreements between the state and those entities, jointly or severally;

(b) represent and act for the state as a member of an interstate or international commission or other body as may be established relating to the Colorado River system in transactions with Colorado River Basin States, the federal government, or a foreign country; and

- (c) report to the governor the measures or legislative actions that the river

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commissioner considers necessary to carry out the provisions of any law relating to the powers and duties of the authority.

(6) The river commissioner shall perform the duties imposed by this chapter and perform all other things the river commissioner considers necessary or expedient to carry out the purposes of this chapter.

Section 23. Section **63M-14-305** is enacted to read:

63M-14-305. Authority consultation with river commissioner.

(1) The river commissioner shall consult with the authority in exercising the powers and performing the duties of the river commissioner enumerated in this chapter.

(2) The river commissioner shall report and make recommendations to the authority at the request of the authority or when the river commissioner considers it proper.

(3) The purpose of consulting with and reporting to the authority is to safeguard and protect the rights and interests of Utah, Utah's agencies, and Utah's citizens in respect of the waters of the Colorado River system.

Section 24. Section **63M-14-306** is enacted to read:

63M-14-306. Investigative powers -- Storage of data relating to the use of the Colorado River system.

(1) The river commissioner may investigate past, present, and potential uses of the water of the Colorado River system within and without the state.

(2) The river commissioner shall investigate, coordinate, collate, and preserve information, facts, and data bearing upon the claims of states and of public or private agencies within and without the state to and in respect of the water and the use of water of the Colorado River system.

Section 25. Section **63M-14-401** is enacted to read:

Part 4. Employees of the Authority

63M-14-401. Executive director.

(1) The chair may hire an executive director.

(2) The executive director:

(a) is responsible for the administering and carrying out the policies of the authority;

(b) shall direct and supervise the technical and administrative activities of the authority;

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(c) subject to the supervision of the chair, is responsible for the conduct of the administrative function of the river commissioner and the authority; and

(d) shall perform any lawful act necessary to carry out the duties of the authority.

(3) The executive director shall, within the limits of available funding, employ the employees necessary to carry out the functions and duties of the executive director. The employees have the duties prescribed by the executive director.

Section 26. Section **63M-14-402** is enacted to read:

63M-14-402. Consultants or other professionals.

To advise the authority on matters relating to the authority, the executive director may:

(1) employ one or more consultants or other professionals; and

(2) employ or retain legal counsel, with the consent of the attorney general, to advise the authority or river commissioner on matters relating to the authority's or river commissioner's operations.

Section 27. Section **63M-14-501** is enacted to read:

Part 5. Financial Operation

63M-14-501. Colorado River Authority Restricted Account.

(1) There is created a restricted account in the General Fund known as the "Colorado River Authority Restricted Account."

(2) The restricted account shall consist of:

(a) money contributed by the following users of the Colorado River system in an amount that the respective governing bodies considers advisable:

(i) an irrigation district;

(ii) a nonprofit corporation;

(iii) a water conservancy district;

(iv) a municipality; or

(v) a metropolitan water district;

(b) appropriations of the Legislature;

(c) contributions from other sources, including federal funding; and

(d) interest or earnings on the restricted account.

(3) (a) The state treasurer shall invest money in the restricted account according to Title 51, Chapter 7, State Money Management Act.

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(b) The ~~Division of Finance~~ state treasurer shall deposit interest or other earnings derived from investment of restricted account money into the restricted account.

(4) Subject to appropriation by the Legislature, money in the restricted account is for the use of the authority to:

(a) fill the authority's statutory duties related to Utah's allocation of water from the Colorado River system;

(b) pay the compensation of employees, consultants, and legal counsel; and

(c) pay the travel expenses of the river commissioner.

(5) In addition to money contributed by the users of the Colorado River system described in Subsection (2)(a), a user may provide in-kind goods and services to the authority.

Section 28. Section **63M-14-502** is enacted to read:

63M-14-502. Budgeting process.

(1) Within the legislative appropriations and in-kind goods and services received by the authority, the authority shall prepare an annual budget of revenues and expenditures for the authority for each fiscal year.

(2) The authority may not make expenditures in excess of the total expenditures established in the annual budget as the budget is adopted or amended.

Section 29. Section **73-10-3** is amended to read:

73-10-3. Organization of board -- Interstate conferences -- Designation of representative -- Salary -- Compacts -- Ratification required.

(1) The board shall elect a [~~chairman,~~] chair and one or more [~~vice-chairmen,~~] vice-chairs who shall be members of the board, and shall establish [~~its~~] the board's own rules of organization and procedure.

(2) The board, with the approval of the executive director of [~~natural resources~~] the Department of Natural Resources and the governor, shall designate a representative who may be one of [~~its~~] the board's members to represent the state [~~of Utah~~] in all interstate conferences between the state [~~of Utah~~] and one or more sister states held for the purpose of entering into compacts between such states for the division of the waters of interstate rivers, lakes, or other sources of water supply, and to represent the state [~~of Utah~~] upon all commissions or other governing bodies provided for by any compacts [~~which~~] that have been or may hereafter be entered into between the state [~~of Utah~~] and one or more sister states. [~~No such compact shall,~~

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~~however,] A compact may not become binding upon the state [of Utah until it has been] until the compact is ratified and approved by the Utah State Legislature [of the state of Utah] and the legislatures of other states [which] that are parties [thereto] to the compact.~~

(3) In acting as such representative of the state ~~[of Utah]~~, the representative so acting shall act under the supervision of the governor, through the executive director of ~~[natural resources]~~ the Department of Natural Resources and of the Board of Water Resources. The director of the Division of Finance shall fix the salary to be paid to the representative while ~~[he]~~ the representative is acting in this capacity.

(4) The designee of the Water Resource Board shall continue to represent the state as outlined in Subsections (2) and (3) on waters in the state except for the Colorado River system which is governed by Title 63M, Chapter 14, Colorado River Authority of Utah Act.

Section 30. Section ~~73-10-4~~ is amended to read:

73-10-4. Powers and duties of board.

(1) The board shall have the following powers and duties to:

(a) authorize studies, investigations, and plans for the full development, use, and promotion of the water and power resources of the state, including preliminary surveys, stream gauging, examinations, tests, and other estimates either separately or in consultation with federal, state and other agencies;

(b) enter into contracts subject to the provisions of this chapter for the construction of conservation projects that in the opinion of the board will conserve and use for the best advantage of the people of this state the water and power resources of the state, including projects beyond the boundaries of the state of Utah located on interstate waters when the benefit of such projects accrues to the citizens of the state;

(c) sue and be sued in accordance with applicable law;

(d) supervise in cooperation with the governor and the executive director of natural resources all matters affecting interstate compact negotiations and the administration of the compacts affecting the waters of interstate rivers, lakes and other sources of supply, with the exception of the waters of the Colorado River system that are governed by Title 63M, Chapter 14, Colorado River Authority of Utah Act;

(e) contract with federal and other agencies and with the National Water Resources Association and to make studies, investigations and recommendations and do all other things

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on behalf of the state for any purpose that relates to the development, conservation, protection and control of the water and power resources of the state;

(f) consult and advise with the Utah Water Users' Association and other organized water users' associations in the state;

(g) consider and make recommendations on behalf of the state of reclamation projects or other water development projects for construction by any agency of the state or United States and in so doing recommend the order in which projects shall be undertaken; or

(h) review, approve, and revoke an application to create a water bank under Chapter 31, Water Banking Act, collect an annual report, maintain the water banking website, and conduct any other function related to a water bank as described in Chapter 31, Water Banking Act.

(2) Nothing contained in this section shall be construed to impair or otherwise interfere with the authority of the state engineer granted by [~~Title 73, Water and Irrigation~~] this title, except as specifically otherwise provided in this section.

Section 31. Section **73-10-18** is amended to read:

73-10-18. Division of Water Resources -- Creation -- Power and authority.

(1) There is created the Division of Water Resources, which shall be within the Department of Natural Resources under the administration and general supervision of the executive director [~~of natural resources~~] of the Department of Natural Resources and under the policy direction of the Board of Water Resources.

(2) [~~The~~] Except for the waters of the Colorado River system that are governed by Title 63M, Chapter 14, Colorado River Authority of Utah Act, the Division of Water Resources shall:

(a) be the water resource authority for the state; and

(b) assume all of the functions, powers, duties, rights, and responsibilities of the Utah water and power board except those which are delegated to the board by this act and is vested with such other functions, powers, duties, rights and responsibilities as provided in this act and other law.

Section 32. **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

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Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

Section 33. **Revisor instructions.**

The Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, replace the references in the following sections from "the effective date of this bill" to the bill's actual effective date:

- (1) Subsection 63M-14-203(3); and
- (2) Subsection 63M-14-301(1).