

1 **RETAIL FACILITY INCENTIVE PAYMENTS AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Mike Schultz**

5 Senate Sponsor: Evan J. Vickers

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions relating to incentive payments for retail facilities.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ prohibits a public entity from making, or entering into an agreement to make,
14 certain incentive payments related to retail facilities after a specified date, with
15 specified exceptions;
- 16 ▶ requires a public entity that makes certain payments related to retail facilities during
17 a fiscal year to submit a report or notification to the Governor's Office of Economic
18 Opportunity (office);
- 19 ▶ requires the office to review a public entity's report to determine whether certain
20 incentive payments comply with this bill;
- 21 ▶ allows a public entity to appeal a determination by the office that certain incentive
22 payments had been made in violation of this bill;
- 23 ▶ allows the office to notify the state auditor after a specified date if a public entity
24 fails to submit a report or fails to make efforts to recoup misused funds within a
25 certain time;
- 26 ▶ allows the state auditor to initiate an audit or investigation if the state auditor
27 receives notice from the office regarding a public entity; and
- 28 ▶ makes technical and conforming changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **10-8-2**, as last amended by Laws of Utah 2021, Chapters 84, 345, and 355

36 **11-41-102**, as last amended by Laws of Utah 2021, Chapter 367

37 **11-41-103**, as enacted by Laws of Utah 2004, Chapter 283

38 **17-27a-102**, as last amended by Laws of Utah 2021, Chapter 432

39 **17C-1-407**, as last amended by Laws of Utah 2019, Chapters 376 and 480

40 **17C-1-409**, as last amended by Laws of Utah 2021, Chapter 214

41 **63G-4-102**, as last amended by Laws of Utah 2021, Chapter 291

42 **63N-1a-301**, as renumbered and amended by Laws of Utah 2021, Chapter 282

43 **67-3-1**, as last amended by Laws of Utah 2021, Chapters 84 and 155

44 ENACTS:

45 **11-41-104**, Utah Code Annotated 1953



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

48 Section 1. Section **10-8-2** is amended to read:

49 **10-8-2. Appropriations -- Acquisition and disposal of property -- Municipal**
50 **authority -- Corporate purpose -- Procedure -- Notice of intent to acquire real property.**

51 (1) (a) [A] Subject to Section **11-41-103**, a municipal legislative body may:

52 (i) appropriate money for corporate purposes only;

53 (ii) provide for payment of debts and expenses of the corporation;

54 (iii) subject to Subsections (4) and (5), purchase, receive, hold, sell, lease, convey, and
55 dispose of real and personal property for the benefit of the municipality, whether the property is
56 within or without the municipality's corporate boundaries, if the action is in the public interest
57 and complies with other law;

58 (iv) improve, protect, and do any other thing in relation to this property that an
59 individual could do; and

60 (v) subject to Subsection (2) and after first holding a public hearing, authorize
61 municipal services or other nonmonetary assistance to be provided to or waive fees required to
62 be paid by a nonprofit entity, whether or not the municipality receives consideration in return.

63 (b) A municipality may:

64 (i) furnish all necessary local public services within the municipality;

65 (ii) purchase, hire, construct, own, maintain and operate, or lease public utilities
66 located and operating within and operated by the municipality; and

67 (iii) subject to Subsection (1)(c), acquire by eminent domain, or otherwise, property
68 located inside or outside the corporate limits of the municipality and necessary for any of the
69 purposes stated in Subsections (1)(b)(i) and (ii), subject to restrictions imposed by Title 78B,
70 Chapter 6, Part 5, Eminent Domain, and general law for the protection of other communities.

71 (c) Each municipality that intends to acquire property by eminent domain under
72 Subsection (1)(b) shall comply with the requirements of Section [78B-6-505](#).

73 (d) Subsection (1)(b) may not be construed to diminish any other authority a
74 municipality may claim to have under the law to acquire by eminent domain property located
75 inside or outside the municipality.

76 (2) (a) Services or assistance provided pursuant to Subsection (1)(a)(v) is not subject to
77 the provisions of Subsection (3).

78 (b) The total amount of services or other nonmonetary assistance provided or fees
79 waived under Subsection (1)(a)(v) in any given fiscal year may not exceed 1% of the
80 municipality's budget for that fiscal year.

81 (3) It is considered a corporate purpose to appropriate money for any purpose that, in
82 the judgment of the municipal legislative body, provides for the safety, health, prosperity,
83 moral well-being, peace, order, comfort, or convenience of the inhabitants of the municipality
84 subject to this Subsection (3).

85 (a) The net value received for any money appropriated shall be measured on a

86 project-by-project basis over the life of the project.

87 (b) (i) A municipal legislative body shall establish the criteria for a determination
88 under this Subsection (3).

89 (ii) A municipal legislative body's determination of value received is presumed valid
90 unless a person can show that the determination was arbitrary, capricious, or illegal.

91 (c) The municipality may consider intangible benefits received by the municipality in
92 determining net value received.

93 (d) (i) Before the municipal legislative body makes any decision to appropriate any
94 funds for a corporate purpose under this section, the municipal legislative body shall hold a
95 public hearing.

96 (ii) At least 14 days before the date of the hearing, the municipal legislative body shall
97 publish a notice of the hearing described in Subsection (3)(d)(i) by posting notice:

98 (A) in at least three conspicuous places within the municipality; and

99 (B) on the Utah Public Notice Website created in Section [63A-16-601](#).

100 (e) (i) Before a municipality provides notice as described in Subsection (3)(d)(ii), the
101 municipality shall perform a study that analyzes and demonstrates the purpose for an
102 appropriation described in this Subsection (3) in accordance with Subsection (3)(e)(iii).

103 (ii) A municipality shall make the study described in Subsection (3)(e)(i) available at
104 the municipality for review by interested parties at least 14 days immediately before the public
105 hearing described in Subsection (3)(d)(i).

106 (iii) A municipality shall consider the following factors when conducting the study
107 described in Subsection (3)(e)(i):

108 (A) what identified benefit the municipality will receive in return for any money or
109 resources appropriated;

110 (B) the municipality's purpose for the appropriation, including an analysis of the way
111 the appropriation will be used to enhance the safety, health, prosperity, moral well-being,
112 peace, order, comfort, or convenience of the inhabitants of the municipality; and

113 (C) whether the appropriation is necessary and appropriate to accomplish the

114 reasonable goals and objectives of the municipality in the area of economic development, job
115 creation, affordable housing, elimination of a development impediment, job preservation, the
116 preservation of historic structures and property, and any other public purpose.

117 (f) (i) An appeal may be taken from a final decision of the municipal legislative body,
118 to make an appropriation.

119 (ii) A person shall file an appeal as described in Subsection (3)(f)(i) with the district
120 court within 30 days after the day on which the municipal legislative body makes a decision.

121 (iii) Any appeal shall be based on the record of the proceedings before the legislative
122 body.

123 (iv) A decision of the municipal legislative body shall be presumed to be valid unless
124 the appealing party shows that the decision was arbitrary, capricious, or illegal.

125 (g) The provisions of this Subsection (3) apply only to those appropriations made after
126 May 6, 2002.

127 (h) This section applies only to appropriations not otherwise approved pursuant to Title
128 10, Chapter 5, Uniform Fiscal Procedures Act for Utah Towns, or Title 10, Chapter 6, Uniform
129 Fiscal Procedures Act for Utah Cities.

130 (4) (a) Before a municipality may dispose of a significant parcel of real property, the
131 municipality shall:

132 (i) provide reasonable notice of the proposed disposition at least 14 days before the
133 opportunity for public comment under Subsection (4)(a)(ii); and

134 (ii) allow an opportunity for public comment on the proposed disposition.

135 (b) Each municipality shall, by ordinance, define what constitutes:

136 (i) a significant parcel of real property for purposes of Subsection (4)(a); and

137 (ii) reasonable notice for purposes of Subsection (4)(a)(i).

138 (5) (a) Except as provided in Subsection (5)(d), each municipality intending to acquire
139 real property for the purpose of expanding the municipality's infrastructure or other facilities
140 used for providing services that the municipality offers or intends to offer shall provide written
141 notice, as provided in this Subsection (5), of its intent to acquire the property if:

- 142 (i) the property is located:
- 143 (A) outside the boundaries of the municipality; and
- 144 (B) in a county of the first or second class; and
- 145 (ii) the intended use of the property is contrary to:
- 146 (A) the anticipated use of the property under the general plan of the county in whose
- 147 unincorporated area or the municipality in whose boundaries the property is located; or
- 148 (B) the property's current zoning designation.
- 149 (b) Each notice under Subsection (5)(a) shall:
- 150 (i) indicate that the municipality intends to acquire real property;
- 151 (ii) identify the real property; and
- 152 (iii) be sent to:
- 153 (A) each county in whose unincorporated area and each municipality in whose
- 154 boundaries the property is located; and
- 155 (B) each affected entity.
- 156 (c) A notice under this Subsection (5) is a protected record as provided in Subsection
- 157 [63G-2-305](#)(8).
- 158 (d) (i) The notice requirement of Subsection (5)(a) does not apply if the municipality
- 159 previously provided notice under Section [10-9a-203](#) identifying the general location within the
- 160 municipality or unincorporated part of the county where the property to be acquired is located.
- 161 (ii) If a municipality is not required to comply with the notice requirement of
- 162 Subsection (5)(a) because of application of Subsection (5)(d)(i), the municipality shall provide
- 163 the notice specified in Subsection (5)(a) as soon as practicable after its acquisition of the real
- 164 property.

165 Section 2. Section **11-41-102** is amended to read:

166 **CHAPTER 41. PROHIBITION ON RETAIL FACILITY INCENTIVE**
167 **PAYMENTS ACT**

168 **11-41-102. Definitions.**

169 As used in this chapter:

170 (1) "Agreement" means an oral or written agreement between a~~[-]~~ public entity and a
171 person.

172 [~~(a) (i) county; or~~]

173 [~~(ii) municipality; and~~]

174 [~~(b) person.~~]

175 [~~(2) "Municipality" means a:~~]

176 [~~(a) city;~~]

177 [~~(b) town; or~~]

178 [~~(c) metro township.~~]

179 [~~(3) "Payment" includes:~~]

180 [~~(a) a payment;~~]

181 [~~(b) a rebate;~~]

182 [~~(c) a refund; or~~]

183 [~~(d) an amount similar to Subsections (3)(a) through (c).~~]

184 [~~(4) "Regional retail business" means a:~~]

185 [~~(a) retail business that occupies a floor area of more than 80,000 square feet;~~]

186 [~~(b) dealer as defined in Section ~~41-1a-102~~;~~]

187 [~~(c) retail shopping facility that has at least two anchor tenants if the total number of~~
188 ~~anchor tenants in the shopping facility occupy a total floor area of more than 150,000 square~~
189 ~~feet; or~~]

190 [~~(d) grocery store that occupies a floor area of more than 30,000 square feet.~~]

191 [~~(5) (a) "Sales and use tax" means a tax:~~]

192 [~~(i) imposed on transactions within a:~~]

193 [~~(A) county; or~~]

194 [~~(B) municipality; and~~]

195 [~~(ii) except as provided in Subsection (5)(b), authorized under Title 59, Chapter 12,~~
196 ~~Sales and Use Tax Act.~~]

197 [~~(b) "Sales and use tax" does not include a tax authorized under:~~]

198 ~~[(i) Subsection 59-12-103(2)(a)(i);]~~
199 ~~[(ii) Subsection 59-12-103(2)(b)(i);]~~
200 ~~[(iii) Subsection 59-12-103(2)(c)(i);]~~
201 ~~[(iv) Subsection 59-12-103(2)(d);]~~
202 ~~[(v) Subsection 59-12-103(2)(e)(i)(A);]~~
203 ~~[(vi) Section 59-12-301;]~~
204 ~~[(vii) Section 59-12-352;]~~
205 ~~[(viii) Section 59-12-353;]~~
206 ~~[(ix) Section 59-12-603; or]~~
207 ~~[(x) Section 59-12-1201;]~~
208 ~~[(6) (a) "Sales and use tax incentive payment" means a payment of revenues:]~~
209 ~~[(i) to a person;]~~
210 ~~[(ii) by a:]~~
211 ~~[(A) county; or]~~
212 ~~[(B) municipality;]~~
213 ~~[(iii) to induce the person to locate or relocate a regional retail business within the:]~~
214 ~~[(A) county; or]~~
215 ~~[(B) municipality; and]~~
216 ~~[(iv) that are derived from a sales and use tax.]~~
217 ~~[(b) "Sales and use tax incentive payment" does not include funding for public~~
218 ~~infrastructure.]~~
219 (2) "Business entity" means a sole proprietorship, partnership, limited partnership,
220 limited liability company, corporation, or other entity or association used to carry on a business
221 for profit.
222 (3) "Determination of violation" means a determination by the Governor's Office of
223 Economic Opportunity of substantial likelihood that a retail facility incentive payment has been
224 made in violation of Section 11-41-103, in accordance with Section 11-41-104.
225 (4) "Environmental mitigation" means an action or activity intended to remedy known

226 negative impacts to the environment.

227 (5) "Executive director" means the executive director of the Governor's Office of
228 Economic Opportunity.

229 (6) "General plan" means the same as that term is defined in Section [23-21-5](#).

230 (7) "Mixed-use development" means development with mixed land uses, including
231 housing.

232 (8) "Moderate income housing plan" means the moderate income housing plan element
233 of a general plan.

234 (9) "Office" means the Governor's Office of Economic Opportunity.

235 (10) "Political subdivision" means any county, city, town, metro township, school
236 district, local district, special service district, community reinvestment agency, or entity created
237 by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act.

238 (11) "Public entity" means:

239 (a) a political subdivision;

240 (b) a state agency as defined in Section [63J-1-220](#);

241 (c) a higher education institution as defined in Section [53B-1-201](#);

242 (d) the Military Installation Development Authority created in Section [63H-1-201](#);

243 (e) the Utah Inland Port Authority created in Section [11-58-201](#); or

244 (f) the Point of the Mountain State Land Authority created in Section [11-59-201](#).

245 (12) "Public funds" means any money received by a public entity that is derived from:

246 (a) a sales and use tax authorized under Title 59, Chapter 12, Sales and Use Tax Act;

247 or

248 (b) a property tax levy.

249 (13) "Public infrastructure" means:

250 (a) a public facility as defined in Section [11-36a-102](#); or

251 (b) public infrastructure included as part of an infrastructure master plan related to a
252 general plan.

253 (14) "Retail facility" means any facility operated by a business entity for the primary

254 purpose of making retail transactions.
255 (15) (a) "Retail facility incentive payment" means a payment of public funds:
256 (i) to a person by a public entity;
257 (ii) for the development, construction, renovation, or operation of a retail facility
258 within an area of the state; and
259 (iii) in the form of:
260 (A) a payment;
261 (B) a rebate;
262 (C) a refund;
263 (D) a subsidy; or
264 (E) any other similar incentive, award, or offset.
265 (b) "Retail facility incentive payment" does not include a payment of public funds for:
266 (i) the development, construction, renovation, or operation of:
267 (A) public infrastructure; or
268 (B) a structured parking facility;
269 (ii) the demolition of an existing facility;
270 (iii) assistance under a state or local:
271 (A) main street program; or
272 (B) historic preservation program;
273 (iv) environmental mitigation or sanitation, if determined by a state or federal agency
274 under applicable state or federal law;
275 (v) assistance under a water conservation program or energy efficiency program, if any
276 business entity located within the public entity's boundaries or subject to the public entity's
277 jurisdiction is eligible to participate in the program;
278 (vi) emergency aid or assistance, if any business entity located within the public entity's
279 boundaries or subject to the public entity's jurisdiction is eligible to receive the emergency aid
280 or assistance; or
281 (vii) assistance under a public safety or security program, if any business entity located

282 within the public entity's boundaries or subject to the public entity's jurisdiction is eligible to
283 participate in the program.

284 (16) "Retail transaction" means any transaction subject to a sales and use tax under
285 Title 59, Chapter 12, Sales and Use Tax Act.

286 (17) (a) "Small business" means a business entity that:

287 (i) has fewer than 30 full-time equivalent employees; and

288 (ii) maintains the business entity's principal office in the state.

289 (b) "Small business" does not include:

290 (i) a franchisee, as defined in 16 C.F.R. Sec. 436.1;

291 (ii) a dealer, as defined in Section 41-1a-102; or

292 (iii) a subsidiary or affiliate of another business entity that is not a small business.

293 Section 3. Section **11-41-103** is amended to read:

294 **11-41-103. Prohibition on retail facility incentive payments -- Exceptions.**

295 [~~A county or municipality may not:~~]

296 (1) Except as provided in Subsection (2), a public entity may not:

297 [~~(1)~~] (a) make a [~~sales and use tax~~] retail facility incentive payment under an agreement
298 that is initiated or entered into on or after July 1, [~~2004~~] 2022; or

299 [~~(2)~~] (b) initiate or enter into an agreement on or after July 1, [~~2004~~] 2022, to make a
300 [~~sales and use tax~~] retail facility incentive payment.

301 (2) Notwithstanding Subsection (1), a public entity may make a retail facility incentive
302 payment for:

303 (a) a retail facility located entirely within a census tract in which more than 51% of
304 residents have a household income at or below 70% of the county area median income;

305 (b) a retail facility included as part of a mixed-use development in which:

306 (i) the development includes at least one housing unit for every 1,250 square feet of
307 retail space within the development; and

308 (ii) at least 10% of the new or proposed housing units within the development qualify
309 as moderate income housing, in accordance with the moderate income housing plan of the

310 municipality or county in which the development is located;

311 (c) a retail facility included as part of a development in which:

312 (i) the retail facility has a gross sales floor area of no more than 20,000 square feet; and

313 (ii) no other retail facility with a gross sales floor area of more than 20,000 square feet

314 is located within the same development;

315 (d) a retail facility located within a county of the fourth, fifth, or sixth class;

316 (e) a retail facility for a small business;

317 (f) a retail facility for a Utah-based nonprofit arts or cultural organization; or

318 (g) a retail facility for a ski resort that:

319 (i) has been in operation for at least 40 years; and

320 (ii) provides at least 1,000 acres for skiing.

321 (3) A person who receives public funds for a mixed-use development in accordance

322 with Subsection (2)(b) may not use the public funds for the development, construction,

323 renovation, or operation of housing units within the mixed-use development unless the housing

324 units qualify as moderate income housing in accordance with the moderate income housing

325 plan of the municipality or county in which the development is located.

326 (4) (a) For each fiscal year that a public entity makes a retail facility incentive payment

327 described in Subsections (2)(a) through (c), the public entity shall submit a written report to the

328 office in accordance with Subsection 11-41-104(1).

329 (b) For each fiscal year that a public entity makes a retail facility incentive payment

330 described in Subsections (2)(d) through (g), the public entity shall submit a notification to the

331 office in accordance with Subsection 11-41-104(2).

332 Section 4. Section **11-41-104** is enacted to read:

333 **11-41-104. Reporting and notification requirements -- Notice to state auditor.**

334 (1) (a) For a fiscal year beginning on or after July 1, 2022, a public entity that makes a

335 retail facility incentive payment described in Subsections 11-41-103(2)(a) through (c) shall

336 submit a written report to the office on or before June 30 of the fiscal year in which the retail

337 facility incentive payment is made.

338 (b) The report under Subsection (1)(a) shall:
339 (i) provide a description of each retail facility incentive payment under Subsections
340 11-41-103(2)(a) through (c) that the public entity made during the fiscal year, including:
341 (A) the type of retail facility incentive payment;
342 (B) the date on which the retail facility incentive payment was made; and
343 (C) identification of the recipient of the retail facility incentive payment;
344 (ii) include any other information requested by the office; and
345 (iii) be in a form prescribed by the office.
346 (2) (a) For a fiscal year beginning on or after July 1, 2022, a public entity that makes a
347 retail facility incentive payment described in Subsections 11-41-103(2)(d) through (g) shall
348 submit a notification to the office on or before June 30 of the fiscal year in which the retail
349 facility incentive payment is made.
350 (b) The notification under Subsection (2)(a) shall:
351 (i) list each retail facility incentive payment under Subsections 11-41-103(2)(d)
352 through (g) that the public entity made during the fiscal year, including the date on which the
353 retail facility incentive payment was made;
354 (ii) include any other information requested by the office; and
355 (iii) be in a form prescribed by the office.
356 (3) Upon the receipt of a report from a public entity under Subsection (1), the office
357 shall review the report to determine whether each retail facility incentive payment described in
358 the report is in compliance with Section 11-41-103.
359 (4) After reviewing a public entity's report under Subsection (3), the office shall send a
360 written notice to the public entity if the office determines there is a substantial likelihood that
361 the public entity made a retail facility incentive payment in violation of Section 11-41-103.
362 (5) The notice under Subsection (4) shall include:
363 (a) a statement that describes in reasonable detail how the office made a determination
364 of violation;
365 (b) an explanation of the public entity's right to appeal the determination of violation in

366 accordance with Subsection (6); and

367 (c) a statement that the office may send notice of the determination of violation to the
368 state auditor in accordance with Subsection (7) if:

369 (i) (A) the public entity does not appeal the determination of violation in accordance
370 with Subsection (6); and

371 (B) the office determines that the public entity has failed to make efforts to recover or
372 recoup the amount of public funds lost to the state as a result of the violation within 90 days
373 after the day on which the notice is sent; or

374 (ii) (A) the determination of violation is upheld on appeal in accordance with
375 Subsection (6); and

376 (B) the office determines that the public entity has failed to make efforts to recover or
377 recoup the amount of public funds lost to the state as a result of the violation within 90 days
378 after the day on which the determination of violation is upheld.

379 (6) (a) The public entity may appeal the determination of violation by sending a written
380 notice to the office within 30 days after the day on which the notice described in Subsection (5)
381 is sent.

382 (b) The notice under Subsection (6)(a) shall include a statement that describes in
383 reasonable detail each objection to the determination of violation.

384 (c) The executive director shall:

385 (i) within 90 days after the day on which the office receives notice under Subsection
386 (6)(a), hold a meeting with representatives of the public entity at which the public entity's
387 objections to the determination of violation are discussed; and

388 (ii) within 30 days after the day on which the meeting under Subsection (6)(c)(i) is
389 held:

390 (A) issue a written decision that upholds or rescinds the determination of violation; and

391 (B) send a copy of the written decision to the public entity.

392 (d) An appeal under this Subsection (6) is not subject to Title 63G, Chapter 4,
393 Administrative Procedures Act.

394 (7) (a) Beginning July 1, 2024, the office may send a written notice to the state auditor
 395 if the office determines that:

- 396 (i) Subsection (5)(c)(i) or (ii) applies to a public entity; or
- 397 (ii) a public entity failed to submit the report described in Subsection (1).

398 (b) The notice under Subsection (7)(a) shall include:

- 399 (i) a description of the office's grounds for sending notice;
- 400 (ii) a copy of the report submitted to the office under Subsection (1), if applicable; and
- 401 (iii) any other information required by the state auditor for purposes of initiating an
 402 audit or investigation in accordance with Section [67-3-1](#).

403 (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 404 office may make rules to implement this section.

405 Section 5. Section **17-27a-102** is amended to read:

406 **17-27a-102. Purposes -- General land use authority -- Limitations.**

407 (1) (a) The purposes of this chapter are to:

- 408 (i) provide for the health, safety, and welfare;
- 409 (ii) promote the prosperity;
- 410 (iii) improve the morals, peace, good order, comfort, convenience, and aesthetics of
 411 each county and each county's present and future inhabitants and businesses;
- 412 (iv) protect the tax base;
- 413 (v) secure economy in governmental expenditures;
- 414 (vi) foster the state's agricultural and other industries;
- 415 (vii) protect both urban and nonurban development;
- 416 (viii) protect and ensure access to sunlight for solar energy devices;
- 417 (ix) provide fundamental fairness in land use regulation;
- 418 (x) facilitate orderly growth and allow growth in a variety of housing types; and
- 419 (xi) protect property values.

420 (b) [~~Except as provided in~~] Subject to Subsection (4) and Section [11-41-103](#), to
 421 accomplish the purposes of this chapter, a county may enact all ordinances, resolutions, and

422 rules and may enter into other forms of land use controls and development agreements that the
423 county considers necessary or appropriate for the use and development of land within the
424 unincorporated area of the county or a designated mountainous planning district, including
425 ordinances, resolutions, rules, restrictive covenants, easements, and development agreements
426 governing:

- 427 (i) uses;
- 428 (ii) density;
- 429 (iii) open spaces;
- 430 (iv) structures;
- 431 (v) buildings;
- 432 (vi) energy-efficiency;
- 433 (vii) light and air;
- 434 (viii) air quality;
- 435 (ix) transportation and public or alternative transportation;
- 436 (x) infrastructure;
- 437 (xi) street and building orientation and width requirements;
- 438 (xii) public facilities;
- 439 (xiii) fundamental fairness in land use regulation; and
- 440 (xiv) considerations of surrounding land uses to balance the foregoing purposes with a
441 landowner's private property interests and associated statutory and constitutional protections.

442 (2) Each county shall comply with the mandatory provisions of this part before any
443 agreement or contract to provide goods, services, or municipal-type services to any storage
444 facility or transfer facility for high-level nuclear waste, or greater than class C radioactive
445 waste, may be executed or implemented.

446 (3) (a) Any ordinance, resolution, or rule enacted by a county pursuant to its authority
447 under this chapter shall comply with the state's exclusive jurisdiction to regulate oil and gas
448 activity, as described in Section [40-6-2.5](#).

449 (b) A county may enact an ordinance, resolution, or rule that regulates surface activity

450 incident to an oil and gas activity if the county demonstrates that the regulation:

- 451 (i) is necessary for the purposes of this chapter;
 - 452 (ii) does not effectively or unduly limit, ban, or prohibit an oil and gas activity; and
 - 453 (iii) does not interfere with the state's exclusive jurisdiction to regulate oil and gas
- 454 activity, as described in Section [40-6-2.5](#).

455 (4) (a) This Subsection (4) applies to development agreements entered into on or after
456 May 5, 2021.

457 (b) A provision in a county development agreement is unenforceable if the provision
458 requires an individual or an entity, as a condition for issuing building permits or otherwise
459 regulating development activities within an unincorporated area of the county, to initiate a
460 process for a municipality to annex the unincorporated area in accordance with Title 10,
461 Chapter 2, Part 4, Annexation.

462 (c) Subsection (4)(b) does not affect or impair the enforceability of any other provision
463 in the development agreement.

464 Section 6. Section **17C-1-407** is amended to read:

465 **17C-1-407. Limitations on tax increment.**

466 (1) (a) If the development of retail sales of goods is the primary objective of an urban
467 renewal project area, tax increment from the urban renewal project area may not be paid to or
468 used by an agency unless the agency makes a development impediment determination under
469 Chapter 2, Part 3, Development Impediment Determination in Urban Renewal Project Areas.

470 (b) ~~[Development]~~ Except as provided in Section [11-41-103](#), development of retail
471 sales of goods does not disqualify an agency from receiving tax increment.

472 (c) After July 1, 2005, an agency may not receive or use tax increment generated from
473 the value of property within an economic development project area that is attributable to the
474 development of retail sales of goods, unless the tax increment was previously pledged to pay
475 for bonds or other contractual obligations of the agency.

476 (2) (a) For the purpose of this Subsection (2):

- 477 (i) "Final tax rate" means the rate used to determine the amount of taxes a taxing entity

478 levies as described in the notice to a taxpayer under Subsection 59-2-1317(2).

479 (ii) "Increased tax revenue" means tax revenue attributable to a tax rate increase.

480 (iii) "Tax rate increase" means the amount calculated by subtracting a taxing entity's
481 certified rate, as defined in Section 59-2-924, from the taxing entity's final tax rate.

482 (b) Except as provided in Subsection (2)(c), for a year in which a taxing entity imposes
483 a final tax rate higher than the certified tax rate, a county shall not pay an agency any portion of
484 a taxing entity's increased tax revenue.

485 (c) Notwithstanding Subsection (2)(b), a county may pay all or a portion of a taxing
486 entity's increased tax revenue to an agency if, at the time of the project area budget approval,
487 the taxing entity committee or each taxing entity that is a party to an agreement under Section
488 17C-4-201 or 17C-5-204 consents to pay the agency the increased tax revenue.

489 (d) If the taxing entity committee or each tax entity that is a party to an agreement
490 under Section 17C-4-201 or 17C-5-204 does not consent to payment of the increased tax
491 revenue to the agency under Subsection (2)(c), the county shall distribute to the taxing entity
492 the increased tax revenue in the same manner as other property tax revenue.

493 (e) Notwithstanding any other provision of this section, if, before tax year 2013,
494 increased tax revenue is paid to an agency without the consent of the taxing entity committee or
495 each taxing entity that is a party to an agreement under Section 17C-4-201 or 17C-5-204, and
496 notwithstanding the law at the time that the tax revenue was collected or increased:

497 (i) the State Tax Commission, the county as the collector of the taxes, a taxing entity,
498 or any other person or entity may not recover, directly or indirectly, the increased tax revenue
499 from the agency by adjustment of a tax rate used to calculate tax increment or otherwise;

500 (ii) the county is not liable to a taxing entity or any other person or entity for the
501 increased tax revenue that was paid to the agency; and

502 (iii) tax increment, including the increased tax revenue, shall continue to be paid to the
503 agency subject to the same number of tax years, percentage of tax increment, and cumulative
504 dollar amount of tax increment as approved in the project area budget and previously paid to
505 the agency.

506 (f) An adjustment may not be made to incremental value under Section 59-2-924 for
507 increased tax revenue not paid to an agency under this section.

508 (3) Except as the taxing entity committee otherwise agrees, an agency may not receive
509 tax increment under an urban renewal or economic development project area budget adopted
510 on or after March 30, 2009:

511 (a) that exceeds the percentage of tax increment or cumulative dollar amount of tax
512 increment specified in the project area budget; or

513 (b) for more tax years than specified in the project area budget.

514 Section 7. Section 17C-1-409 is amended to read:

515 **17C-1-409. Allowable uses of agency funds.**

516 (1) (a) An agency may use agency funds:

517 (i) for any purpose authorized under this title;

518 (ii) for administrative, overhead, legal, or other operating expenses of the agency,
519 including consultant fees and expenses under Subsection 17C-2-102(1)(b)(ii)(B) or funding for
520 a business resource center;

521 (iii) subject to Section 11-41-103, to pay for, including financing or refinancing, all or
522 part of:

523 (A) project area development in a project area, including environmental remediation
524 activities occurring before or after adoption of the project area plan;

525 (B) housing-related expenditures, projects, or programs as described in Section
526 17C-1-411 or 17C-1-412;

527 (C) an incentive or other consideration paid to a participant under a participation
528 agreement;

529 (D) subject to Subsections (1)(c) and (4), the value of the land for and the cost of the
530 installation and construction of any publicly owned building, facility, structure, landscaping, or
531 other improvement within the project area from which the project area funds are collected; or

532 (E) the cost of the installation of publicly owned infrastructure and improvements
533 outside the project area from which the project area funds are collected if the board and the

534 community legislative body determine by resolution that the publicly owned infrastructure and
535 improvements benefit the project area;

536 (iv) in an urban renewal project area that includes some or all of an inactive industrial
537 site and subject to Subsection (1)(e), to reimburse the Department of Transportation created
538 under Section 72-1-201, or a public transit district created under Title 17B, Chapter 2a, Part 8,
539 Public Transit District Act, for the cost of:

540 (A) construction of a public road, bridge, or overpass;

541 (B) relocation of a railroad track within the urban renewal project area; or

542 (C) relocation of a railroad facility within the urban renewal project area;

543 (v) subject to Subsection (5), to transfer funds to a community that created the agency;

544 or

545 (vi) subject to Subsection (1)(f), for agency-wide project development under Part 10,
546 Agency Taxing Authority.

547 (b) The determination of the board and the community legislative body under
548 Subsection (1)(a)(iii)(E) regarding benefit to the project area shall be final and conclusive.

549 (c) An agency may not use project area funds received from a taxing entity for the
550 purposes stated in Subsection (1)(a)(iii)(D) under an urban renewal project area plan, an
551 economic development project area plan, or a community reinvestment project area plan
552 without the community legislative body's consent.

553 (d) (i) Subject to Subsection (1)(d)(ii), an agency may loan project area funds from a
554 project area fund to another project area fund if:

555 (A) the board approves; and

556 (B) the community legislative body approves.

557 (ii) An agency may not loan project area funds under Subsection (1)(d)(i) unless the
558 projections for agency funds are sufficient to repay the loan amount.

559 (iii) A loan described in Subsection (1)(d) is not subject to Title 10, Chapter 5,
560 Uniform Fiscal Procedures Act for Utah Towns, Title 10, Chapter 6, Uniform Fiscal
561 Procedures Act for Utah Cities, Title 17, Chapter 36, Uniform Fiscal Procedures Act for

562 Counties, or Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts.

563 (e) Before an agency may pay any tax increment or sales tax revenue under Subsection
564 (1)(a)(iv), the agency shall enter into an interlocal agreement defining the terms of the
565 reimbursement with:

566 (i) the Department of Transportation; or

567 (ii) a public transit district.

568 (f) Before an agency may use project area funds for agency-wide project development,
569 as defined in Section 17C-1-1001, the agency shall obtain the consent of the taxing entity
570 committee or each taxing entity party to an interlocal agreement with the agency.

571 (2) (a) Sales and use tax revenue that an agency receives from a taxing entity is not
572 subject to the prohibition or limitations of Title 11, Chapter 41, Prohibition on Sales and Use
573 Tax Incentive Payments Act.

574 (b) An agency may use sales and use tax revenue that the agency receives under an
575 interlocal agreement under Section 17C-4-201 or 17C-5-204 for the uses authorized in the
576 interlocal agreement.

577 (3) (a) An agency may contract with the community that created the agency or another
578 public entity to use agency funds to reimburse the cost of items authorized by this title to be
579 paid by the agency that are paid by the community or other public entity.

580 (b) If land is acquired or the cost of an improvement is paid by another public entity
581 and the land or improvement is leased to the community, an agency may contract with and
582 make reimbursement from agency funds to the community.

583 (4) Notwithstanding any other provision of this title, an agency may not use project
584 area funds, project area incremental revenue as defined in Section 17C-1-1001, or property tax
585 revenue as defined in Section 17C-1-1001, to construct a local government building unless the
586 taxing entity committee or each taxing entity party to an interlocal agreement with the agency
587 consents.

588 (5) For the purpose of offsetting the community's annual local contribution to the
589 Homeless Shelter Cities Mitigation Restricted Account, the total amount an agency transfers in

590 a calendar year to a community under Subsections (1)(a)(v), 17C-1-411(1)(d), and
591 17C-1-412(1)(a)(x) may not exceed the community's annual local contribution as defined in
592 Section 35A-8-606.

593 Section 8. Section 63G-4-102 is amended to read:

594 **63G-4-102. Scope and applicability of chapter.**

595 (1) Except as set forth in Subsection (2), and except as otherwise provided by a statute
596 superseding provisions of this chapter by explicit reference to this chapter, the provisions of
597 this chapter apply to every agency of the state and govern:

598 (a) state agency action that determines the legal rights, duties, privileges, immunities,
599 or other legal interests of an identifiable person, including agency action to grant, deny, revoke,
600 suspend, modify, annul, withdraw, or amend an authority, right, or license; and

601 (b) judicial review of the action.

602 (2) This chapter does not govern:

603 (a) the procedure for making agency rules, or judicial review of the procedure or rules;

604 (b) the issuance of a notice of a deficiency in the payment of a tax, the decision to
605 waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the
606 issuance of a tax assessment, except that this chapter governs an agency action commenced by
607 a taxpayer or by another person authorized by law to contest the validity or correctness of the
608 action;

609 (c) state agency action relating to extradition, to the granting of a pardon or parole, a
610 commutation or termination of a sentence, or to the rescission, termination, or revocation of
611 parole or probation, to the discipline of, resolution of a grievance of, supervision of,
612 confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah
613 State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction
614 of the Division of Substance Abuse and Mental Health, or a person on probation or parole, or
615 judicial review of the action;

616 (d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a
617 student or teacher in a school or educational institution, or judicial review of the action;

618 (e) an application for employment and internal personnel action within an agency
619 concerning its own employees, or judicial review of the action;

620 (f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah
621 Occupational Safety and Health Act, and Title 58, Occupations and Professions, except that
622 this chapter governs an agency action commenced by the employer, licensee, or other person
623 authorized by law to contest the validity or correctness of the citation or assessment;

624 (g) state agency action relating to management of state funds, the management and
625 disposal of school and institutional trust land assets, and contracts for the purchase or sale of
626 products, real property, supplies, goods, or services by or for the state, or by or for an agency of
627 the state, except as provided in those contracts, or judicial review of the action;

628 (h) state agency action under Title 7, Chapter 1, Part 3, Powers and Duties of
629 Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution
630 by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or
631 Holding Companies, and [~~Title 63G,~~] Chapter 7, Governmental Immunity Act of Utah, or
632 judicial review of the action;

633 (i) the initial determination of a person's eligibility for unemployment benefits, the
634 initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers'
635 Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial
636 determination of a person's unemployment tax liability;

637 (j) state agency action relating to the distribution or award of a monetary grant to or
638 between governmental units, or for research, development, or the arts, or judicial review of the
639 action;

640 (k) the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah
641 Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19,
642 Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19,
643 Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act,
644 Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used
645 Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, except

646 that this chapter governs an agency action commenced by a person authorized by law to contest
647 the validity or correctness of the notice or order;

648 (l) state agency action, to the extent required by federal statute or regulation, to be
649 conducted according to federal procedures;

650 (m) the initial determination of a person's eligibility for government or public
651 assistance benefits;

652 (n) state agency action relating to wildlife licenses, permits, tags, and certificates of
653 registration;

654 (o) a license for use of state recreational facilities;

655 (p) state agency action under [~~Title 63G,~~] Chapter 2, Government Records Access and
656 Management Act, except as provided in Section 63G-2-603;

657 (q) state agency action relating to the collection of water commissioner fees and
658 delinquency penalties, or judicial review of the action;

659 (r) state agency action relating to the installation, maintenance, and repair of headgates,
660 caps, valves, or other water controlling works and weirs, flumes, meters, or other water
661 measuring devices, or judicial review of the action;

662 (s) the issuance and enforcement of an initial order under Section 73-2-25;

663 (t) (i) a hearing conducted by the Division of Securities under Section 61-1-11.1; and

664 (ii) an action taken by the Division of Securities under a hearing conducted under
665 Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange
666 of securities described in Subsection 61-1-11.1(1);

667 (u) state agency action relating to water well driller licenses, water well drilling
668 permits, water well driller registration, or water well drilling construction standards, or judicial
669 review of the action;

670 (v) the issuance of a determination and order under Title 34A, Chapter 5, Utah
671 Antidiscrimination Act;

672 (w) state environmental studies and related decisions by the Department of
673 Transportation approving state or locally funded projects, or judicial review of the action; [or]

674 (x) the suspension of operations under Subsection [32B-1-304\(3\)](#)~~[-]~~; or
675 (y) the issuance of a determination of violation by the Governor's Office of Economic
676 Opportunity under Section [11-41-104](#).

677 (3) This chapter does not affect a legal remedy otherwise available to:

678 (a) compel an agency to take action; or

679 (b) challenge an agency's rule.

680 (4) This chapter does not preclude an agency, prior to the beginning of an adjudicative
681 proceeding, or the presiding officer during an adjudicative proceeding from:

682 (a) requesting or ordering a conference with parties and interested persons to:

683 (i) encourage settlement;

684 (ii) clarify the issues;

685 (iii) simplify the evidence;

686 (iv) facilitate discovery; or

687 (v) expedite the proceeding; or

688 (b) granting a timely motion to dismiss or for summary judgment if the requirements of
689 Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party,
690 except to the extent that the requirements of those rules are modified by this chapter.

691 (5) (a) A declaratory proceeding authorized by Section [63G-4-503](#) is not governed by
692 this chapter, except as explicitly provided in that section.

693 (b) Judicial review of a declaratory proceeding authorized by Section [63G-4-503](#) is
694 governed by this chapter.

695 (6) This chapter does not preclude an agency from enacting a rule affecting or
696 governing an adjudicative proceeding or from following the rule, if the rule is enacted
697 according to the procedures outlined in [~~Title 63G,~~] Chapter 3, Utah Administrative
698 Rulemaking Act, and if the rule conforms to the requirements of this chapter.

699 (7) (a) If the attorney general issues a written determination that a provision of this
700 chapter would result in the denial of funds or services to an agency of the state from the federal
701 government, the applicability of the provision to that agency shall be suspended to the extent

702 necessary to prevent the denial.

703 (b) The attorney general shall report the suspension to the Legislature at its next
704 session.

705 (8) Nothing in this chapter may be interpreted to provide an independent basis for
706 jurisdiction to review final agency action.

707 (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good
708 cause shown, from lengthening or shortening a time period prescribed in this chapter, except
709 the time period established for judicial review.

710 (10) Notwithstanding any other provision of this section, this chapter does not apply to
711 a special adjudicative proceeding, as defined in Section 19-1-301.5, except to the extent
712 expressly provided in Section 19-1-301.5.

713 (11) Subsection (2)(w), regarding action taken based on state environmental studies
714 and policies of the Department of Transportation, applies to any claim for which a court of
715 competent jurisdiction has not issued a final unappealable judgment or order before May 14,
716 2019.

717 Section 9. Section **63N-1a-301** is amended to read:

718 **63N-1a-301. Creation of office -- Responsibilities.**

719 (1) There is created the Governor's Office of Economic Opportunity.

720 (2) The office is:

721 (a) responsible for implementing the statewide economic development strategy
722 developed by the commission; and

723 (b) the industrial and business promotion authority of the state.

724 (3) The office shall:

725 (a) consistent with the statewide economic development strategy, coordinate and align
726 into a single effort the activities of the economic opportunity agencies in the field of economic
727 development;

728 (b) provide support and direction to economic opportunity agencies in establishing
729 goals, metrics, and activities that align with the statewide economic development strategy;

- 730 (c) administer and coordinate state and federal economic development grant programs;
- 731 (d) promote and encourage the economic, commercial, financial, industrial,
- 732 agricultural, and civic welfare of the state;
- 733 (e) promote and encourage the employment of workers in the state and the purchase of
- 734 goods and services produced in the state by local businesses;
- 735 (f) act to create, develop, attract, and retain business, industry, and commerce in the
- 736 state[;];
- 737 (i) in accordance with the statewide economic development plan and commission
- 738 directives; and
- 739 (ii) subject to the restrictions in Section 11-41-103;
- 740 (g) act to enhance the state's economy;
- 741 (h) act to assist strategic industries that are likely to drive future economic growth;
- 742 (i) assist communities in the state in developing economic development capacity and
- 743 coordination with other communities;
- 744 (j) identify areas of education and workforce development in the state that can be
- 745 improved to support economic and business development;
- 746 (k) consistent with direction from the commission, develop core strategic priorities for
- 747 the office, which may include:
- 748 (i) enhancing statewide access to entrepreneurship opportunities and small business
- 749 support;
- 750 (ii) focusing industry recruitment and expansion on strategically chosen clusters of
- 751 industries;
- 752 (iii) ensuring that in awarding competitive economic development incentives the office
- 753 accurately measures the benefits and costs of the incentives; and
- 754 (iv) assisting communities with technical support to aid those communities in
- 755 improving economic development opportunities;
- 756 (l) submit an annual written report as described in Section 63N-1a-306; and
- 757 (m) perform other duties as provided by the Legislature.

758 (4) In order to perform its duties under this title, the office may:

759 (a) enter into a contract or agreement with, or make a grant to, a public or private
760 entity, including a municipality, if the contract or agreement is not in violation of state statute
761 or other applicable law;

762 (b) except as provided in Subsection (4)(c), receive and expend funds from a public or
763 private source for any lawful purpose that is in the state's best interest; and

764 (c) solicit and accept a contribution of money, services, or facilities from a public or
765 private donor, but may not use the contribution for publicizing the exclusive interest of the
766 donor.

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

769 (6) (a) The office shall:

770 (i) obtain the advice of the GO Utah board before implementing a change to a policy,
771 priority, or objective under which the office operates; and

772 (ii) provide periodic updates to the commission regarding the office's efforts under
773 Subsections (3)(a) and (b).

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

777 Section 10. Section **67-3-1** is amended to read:

778 **67-3-1. Functions and duties.**

779 (1) (a) The state auditor is the auditor of public accounts and is independent of any
780 executive or administrative officers of the state.

781 (b) The state auditor is not limited in the selection of personnel or in the determination
782 of the reasonable and necessary expenses of the state auditor's office.

783 (2) The state auditor shall examine and certify annually in respect to each fiscal year,
784 financial statements showing:

785 (a) the condition of the state's finances;

786 (b) the revenues received or accrued;
787 (c) expenditures paid or accrued;
788 (d) the amount of unexpended or unencumbered balances of the appropriations to the
789 agencies, departments, divisions, commissions, and institutions; and
790 (e) the cash balances of the funds in the custody of the state treasurer.

791 (3) (a) The state auditor shall:

792 (i) audit each permanent fund, each special fund, the General Fund, and the accounts of
793 any department of state government or any independent agency or public corporation as the law
794 requires, as the auditor determines is necessary, or upon request of the governor or the
795 Legislature;

796 (ii) perform the audits in accordance with generally accepted auditing standards and
797 other auditing procedures as promulgated by recognized authoritative bodies; and

798 (iii) as the auditor determines is necessary, conduct the audits to determine:

799 (A) honesty and integrity in fiscal affairs;
800 (B) accuracy and reliability of financial statements;
801 (C) effectiveness and adequacy of financial controls; and
802 (D) compliance with the law.

803 (b) If any state entity receives federal funding, the state auditor shall ensure that the
804 audit is performed in accordance with federal audit requirements.

805 (c) (i) The costs of the federal compliance portion of the audit may be paid from an
806 appropriation to the state auditor from the General Fund.

807 (ii) If an appropriation is not provided, or if the federal government does not
808 specifically provide for payment of audit costs, the costs of the federal compliance portions of
809 the audit shall be allocated on the basis of the percentage that each state entity's federal funding
810 bears to the total federal funds received by the state.

811 (iii) The allocation shall be adjusted to reflect any reduced audit time required to audit
812 funds passed through the state to local governments and to reflect any reduction in audit time
813 obtained through the use of internal auditors working under the direction of the state auditor.

814 (4) (a) Except as provided in Subsection (4)(b), the state auditor shall, in addition to
815 financial audits, and as the auditor determines is necessary, conduct performance and special
816 purpose audits, examinations, and reviews of any entity that receives public funds, including a
817 determination of any or all of the following:

- 818 (i) the honesty and integrity of all the entity's fiscal affairs;
- 819 (ii) whether the entity's administrators have faithfully complied with legislative intent;
- 820 (iii) whether the entity's operations have been conducted in an efficient, effective, and
821 cost-efficient manner;
- 822 (iv) whether the entity's programs have been effective in accomplishing the intended
823 objectives; and
- 824 (v) whether the entity's management, control, and information systems are adequate,
825 effective, and secure.

826 (b) The auditor may not conduct performance and special purpose audits,
827 examinations, and reviews of any entity that receives public funds if the entity:

- 828 (i) has an elected auditor; and
- 829 (ii) has, within the entity's last budget year, had the entity's financial statements or
830 performance formally reviewed by another outside auditor.

831 (5) The state auditor:

832 (a) shall administer any oath or affirmation necessary to the performance of the duties
833 of the auditor's office; and

834 (b) may:

- 835 (i) subpoena witnesses and documents, whether electronic or otherwise; and
- 836 (ii) examine into any matter that the auditor considers necessary.

837 (6) The state auditor may require all persons who have had the disposition or
838 management of any property of this state or its political subdivisions to submit statements
839 regarding the property at the time and in the form that the auditor requires.

840 (7) The state auditor shall:

841 (a) except where otherwise provided by law, institute suits in Salt Lake County in

842 relation to the assessment, collection, and payment of revenues against:

843 (i) persons who by any means have become entrusted with public money or property

844 and have failed to pay over or deliver the money or property; and

845 (ii) all debtors of the state;

846 (b) collect and pay into the state treasury all fees received by the state auditor;

847 (c) perform the duties of a member of all boards of which the state auditor is a member

848 by the constitution or laws of the state, and any other duties that are prescribed by the

849 constitution and by law;

850 (d) stop the payment of the salary of any state official or state employee who:

851 (i) refuses to settle accounts or provide required statements about the custody and

852 disposition of public funds or other state property;

853 (ii) refuses, neglects, or ignores the instruction of the state auditor or any controlling

854 board or department head with respect to the manner of keeping prescribed accounts or funds;

855 or

856 (iii) fails to correct any delinquencies, improper procedures, and errors brought to the

857 official's or employee's attention;

858 (e) establish accounting systems, methods, and forms for public accounts in all taxing

859 or fee-assessing units of the state in the interest of uniformity, efficiency, and economy;

860 (f) superintend the contractual auditing of all state accounts;

861 (g) subject to Subsection (8)(a), withhold state allocated funds or the disbursement of

862 property taxes from a state or local taxing or fee-assessing unit, if necessary, to ensure that

863 officials and employees in those taxing units comply with state laws and procedures in the

864 budgeting, expenditures, and financial reporting of public funds;

865 (h) subject to Subsection (9), withhold the disbursement of tax money from any county,

866 if necessary, to ensure that officials and employees in the county comply with Section

867 [59-2-303.1](#); and

868 (i) withhold state allocated funds or the disbursement of property taxes from a local

869 government entity or a limited purpose entity, as those terms are defined in Section [67-1a-15](#) if

870 the state auditor finds the withholding necessary to ensure that the entity registers and
871 maintains the entity's registration with the lieutenant governor, in accordance with Section
872 [67-1a-15](#).

873 (8) (a) Except as otherwise provided by law, the state auditor may not withhold funds
874 under Subsection (7)(g) until a state or local taxing or fee-assessing unit has received formal
875 written notice of noncompliance from the auditor and has been given 60 days to make the
876 specified corrections.

877 (b) If, after receiving notice under Subsection (8)(a), a state or independent local
878 fee-assessing unit that exclusively assesses fees has not made corrections to comply with state
879 laws and procedures in the budgeting, expenditures, and financial reporting of public funds, the
880 state auditor:

881 (i) shall provide a recommended timeline for corrective actions;

882 (ii) may prohibit the state or local fee-assessing unit from accessing money held by the
883 state; and

884 (iii) may prohibit a state or local fee-assessing unit from accessing money held in an
885 account of a financial institution by filing an action in district court requesting an order of the
886 court to prohibit a financial institution from providing the fee-assessing unit access to an
887 account.

888 (c) The state auditor shall remove a limitation on accessing funds under Subsection
889 (8)(b) upon compliance with state laws and procedures in the budgeting, expenditures, and
890 financial reporting of public funds.

891 (d) If a local taxing or fee-assessing unit has not adopted a budget in compliance with
892 state law, the state auditor:

893 (i) shall provide notice to the taxing or fee-assessing unit of the unit's failure to
894 comply;

895 (ii) may prohibit the taxing or fee-assessing unit from accessing money held by the
896 state; and

897 (iii) may prohibit a taxing or fee-assessing unit from accessing money held in an

898 account of a financial institution by:

899 (A) contacting the taxing or fee-assessing unit's financial institution and requesting that
900 the institution prohibit access to the account; or

901 (B) filing an action in district court requesting an order of the court to prohibit a
902 financial institution from providing the taxing or fee-assessing unit access to an account.

903 (e) If the local taxing or fee-assessing unit adopts a budget in compliance with state
904 law, the state auditor shall eliminate a limitation on accessing funds described in Subsection
905 (8)(d).

906 (9) The state auditor may not withhold funds under Subsection (7)(h) until a county has
907 received formal written notice of noncompliance from the auditor and has been given 60 days
908 to make the specified corrections.

909 (10) (a) The state auditor may not withhold funds under Subsection (7)(i) until the state
910 auditor receives a notice of non-registration, as that term is defined in Section 67-1a-15.

911 (b) If the state auditor receives a notice of non-registration, the state auditor may
912 prohibit the local government entity or limited purpose entity, as those terms are defined in
913 Section 67-1a-15, from accessing:

914 (i) money held by the state; and

915 (ii) money held in an account of a financial institution by:

916 (A) contacting the entity's financial institution and requesting that the institution
917 prohibit access to the account; or

918 (B) filing an action in district court requesting an order of the court to prohibit a
919 financial institution from providing the entity access to an account.

920 (c) The state auditor shall remove the prohibition on accessing funds described in
921 Subsection (10)(b) if the state auditor received a notice of registration, as that term is defined in
922 Section 67-1a-15, from the lieutenant governor.

923 (11) Notwithstanding Subsection (7)(g), (7)(h), (7)(i), (8)(b), (8)(d), or (10)(b), the
924 state auditor:

925 (a) shall authorize a disbursement by a local government entity or limited purpose

926 entity, as those terms are defined in Section 67-1a-15, or a state or local taxing or fee-assessing
927 unit if the disbursement is necessary to:

928 (i) avoid a major disruption in the operations of the local government entity, limited
929 purpose entity, or state or local taxing or fee-assessing unit; or

930 (ii) meet debt service obligations; and

931 (b) may authorize a disbursement by a local government entity, limited purpose entity,
932 or state or local taxing or fee-assessing unit as the state auditor determines is appropriate.

933 (12) (a) The state auditor may seek relief under the Utah Rules of Civil Procedure to
934 take temporary custody of public funds if an action is necessary to protect public funds from
935 being improperly diverted from their intended public purpose.

936 (b) If the state auditor seeks relief under Subsection (12)(a):

937 (i) the state auditor is not required to exhaust the procedures in Subsection (7) or (8);
938 and

939 (ii) the state treasurer may hold the public funds in accordance with Section 67-4-1 if a
940 court orders the public funds to be protected from improper diversion from their public
941 purpose.

942 (13) The state auditor shall:

943 (a) establish audit guidelines and procedures for audits of local mental health and
944 substance abuse authorities and their contract providers, conducted pursuant to Title 17,
945 Chapter 43, Part 2, Local Substance Abuse Authorities, Title 17, Chapter 43, Part 3, Local
946 Mental Health Authorities, Title 51, Chapter 2a, Accounting Reports from Political
947 Subdivisions, Interlocal Organizations, and Other Local Entities Act, and Title 62A, Chapter
948 15, Substance Abuse and Mental Health Act; and

949 (b) ensure that those guidelines and procedures provide assurances to the state that:

950 (i) state and federal funds appropriated to local mental health authorities are used for
951 mental health purposes;

952 (ii) a private provider under an annual or otherwise ongoing contract to provide
953 comprehensive mental health programs or services for a local mental health authority is in

954 compliance with state and local contract requirements, and state and federal law;

955 (iii) state and federal funds appropriated to local substance abuse authorities are used
956 for substance abuse programs and services; and

957 (iv) a private provider under an annual or otherwise ongoing contract to provide
958 comprehensive substance abuse programs or services for a local substance abuse authority is in
959 compliance with state and local contract requirements, and state and federal law.

960 (14) (a) The state auditor may, in accordance with the auditor's responsibilities for
961 political subdivisions of the state as provided in Title 51, Chapter 2a, Accounting Reports from
962 Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, initiate audits or
963 investigations of any political subdivision that are necessary to determine honesty and integrity
964 in fiscal affairs, accuracy and reliability of financial statements, effectiveness, and adequacy of
965 financial controls and compliance with the law.

966 (b) If the state auditor receives notice under Subsection 11-41-104(7) from the
967 Governor's Office of Economic Opportunity on or after July 1, 2024, the state auditor may
968 initiate an audit or investigation of the public entity subject to the notice to determine
969 compliance with Section 11-41-103.

970 (15) (a) The state auditor may not audit work that the state auditor performed before
971 becoming state auditor.

972 (b) If the state auditor has previously been a responsible official in state government
973 whose work has not yet been audited, the Legislature shall:

- 974 (i) designate how that work shall be audited; and
- 975 (ii) provide additional funding for those audits, if necessary.

976 (16) The state auditor shall:

977 (a) with the assistance, advice, and recommendations of an advisory committee
978 appointed by the state auditor from among local district boards of trustees, officers, and
979 employees and special service district boards, officers, and employees:

980 (i) prepare a Uniform Accounting Manual for Local Districts that:

981 (A) prescribes a uniform system of accounting and uniform budgeting and reporting

982 procedures for local districts under Title 17B, Limited Purpose Local Government Entities -
983 Local Districts, and special service districts under Title 17D, Chapter 1, Special Service
984 District Act;

985 (B) conforms with generally accepted accounting principles; and

986 (C) prescribes reasonable exceptions and modifications for smaller districts to the
987 uniform system of accounting, budgeting, and reporting;

988 (ii) maintain the manual under this Subsection (16)(a) so that the manual continues to
989 reflect generally accepted accounting principles;

990 (iii) conduct a continuing review and modification of procedures in order to improve
991 them;

992 (iv) prepare and supply each district with suitable budget and reporting forms; and

993 (v) (A) prepare instructional materials, conduct training programs, and render other
994 services considered necessary to assist local districts and special service districts in
995 implementing the uniform accounting, budgeting, and reporting procedures; and

996 (B) ensure that any training described in Subsection (16)(a)(v)(A) complies with Title
997 63G, Chapter 22, State Training and Certification Requirements; and

998 (b) continually analyze and evaluate the accounting, budgeting, and reporting practices
999 and experiences of specific local districts and special service districts selected by the state
1000 auditor and make the information available to all districts.

1001 (17) (a) The following records in the custody or control of the state auditor are
1002 protected records under Title 63G, Chapter 2, Government Records Access and Management
1003 Act:

1004 (i) records that would disclose information relating to allegations of personal
1005 misconduct, gross mismanagement, or illegal activity of a past or present governmental
1006 employee if the information or allegation cannot be corroborated by the state auditor through
1007 other documents or evidence, and the records relating to the allegation are not relied upon by
1008 the state auditor in preparing a final audit report;

1009 (ii) records and audit workpapers to the extent the workpapers would disclose the

1010 identity of an individual who during the course of an audit, communicated the existence of any
1011 waste of public funds, property, or manpower, or a violation or suspected violation of a law,
1012 rule, or regulation adopted under the laws of this state, a political subdivision of the state, or
1013 any recognized entity of the United States, if the information was disclosed on the condition
1014 that the identity of the individual be protected;

1015 (iii) before an audit is completed and the final audit report is released, records or drafts
1016 circulated to an individual who is not an employee or head of a governmental entity for the
1017 individual's response or information;

1018 (iv) records that would disclose an outline or part of any audit survey plans or audit
1019 program; and

1020 (v) requests for audits, if disclosure would risk circumvention of an audit.

1021 (b) The provisions of Subsections (17)(a)(i), (ii), and (iii) do not prohibit the disclosure
1022 of records or information that relate to a violation of the law by a governmental entity or
1023 employee to a government prosecutor or peace officer.

1024 (c) The provisions of this Subsection (17) do not limit the authority otherwise given to
1025 the state auditor to classify a document as public, private, controlled, or protected under Title
1026 63G, Chapter 2, Government Records Access and Management Act.

1027 (d) (i) As used in this Subsection (17)(d), "record dispute" means a dispute between the
1028 state auditor and the subject of an audit performed by the state auditor as to whether the state
1029 auditor may release a record, as defined in Section 63G-2-103, to the public that the state
1030 auditor gained access to in the course of the state auditor's audit but which the subject of the
1031 audit claims is not subject to disclosure under Title 63G, Chapter 2, Government Records
1032 Access and Management Act.

1033 (ii) The state auditor may submit a record dispute to the State Records Committee,
1034 created in Section 63G-2-501, for a determination of whether the state auditor may, in
1035 conjunction with the state auditor's release of an audit report, release to the public the record
1036 that is the subject of the record dispute.

1037 (iii) The state auditor or the subject of the audit may seek judicial review of a State

1038 Records Committee determination under Subsection (17)(d)(ii), as provided in Section
1039 [63G-2-404](#).

1040 (18) If the state auditor conducts an audit of an entity that the state auditor has
1041 previously audited and finds that the entity has not implemented a recommendation made by
1042 the state auditor in a previous audit, the state auditor shall notify the Legislative Management
1043 Committee through the Legislative Management Committee's audit subcommittee that the
1044 entity has not implemented that recommendation.

1045 (19) The state auditor shall, with the advice and consent of the Senate, appoint the state
1046 privacy officer described in Section [67-3-13](#).

1047 (20) The state auditor shall report, or ensure that another government entity reports, on
1048 the financial, operational, and performance metrics for the state system of higher education and
1049 the state system of public education, including metrics in relation to students, programs, and
1050 schools within those systems.