

Senator Evan J. Vickers proposes the following substitute bill:

RETAIL FACILITY INCENTIVE PAYMENTS AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits a public entity from making, or entering into an agreement to make, certain incentive payments related to retail facilities after a specified date, with specified exceptions;
- ▶ requires a public entity that makes certain payments related to retail facilities during a fiscal year to submit a report or notification to the Governor's Office of Economic Opportunity (office);
- ▶ requires the office to review a public entity's report to determine whether certain incentive payments comply with this bill;
- ▶ allows a public entity to appeal a determination by the office that certain incentive payments had been made in violation of this bill;
- ▶ allows the office to notify the state auditor after a specified date if a public entity fails to submit a report or fails to make efforts to recoup misused funds within a 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)(c)(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; or
317 (f) a retail facility for a Utah-based nonprofit arts or cultural organization.
318 (3) A person who receives public funds for a mixed-use development in accordance
319 with Subsection (2)(b) may not use the public funds for the development, construction,
320 renovation, or operation of housing units within the mixed-use development unless the housing
321 units qualify as moderate income housing in accordance with the moderate income housing
322 plan of the municipality or county in which the development is located.
323 (4) (a) For each fiscal year that a public entity makes a retail facility incentive payment
324 described in Subsections (2)(a) through (c), the public entity shall submit a written report to the
325 office in accordance with Subsection [11-41-104\(1\)](#).
326 (b) For each fiscal year that a public entity makes a retail facility incentive payment
327 described in Subsections (2)(d) through (f), the public entity shall submit a notification to the
328 office in accordance with Subsection [11-41-104\(2\)](#).
329 Section 4. Section **11-41-104** is enacted to read:
330 **11-41-104. Reporting and notification requirements -- Notice to state auditor.**
331 (1) (a) For a fiscal year beginning on or after July 1, 2022, a public entity that makes a
332 retail facility incentive payment described in Subsections [11-41-103\(2\)\(a\)](#) through (c) shall
333 submit a written report to the office on or before June 30 of the fiscal year in which the retail
334 facility incentive payment is made.
335 (b) The report under Subsection (1)(a) shall:

336 (i) provide a description of each retail facility incentive payment under Subsections
337 11-41-103(2)(a) through (c) that the public entity made during the fiscal year, including:

338 (A) the type of retail facility incentive payment;

339 (B) the date on which the retail facility incentive payment was made; and

340 (C) identification of the recipient of the retail facility incentive payment;

341 (ii) include any other information requested by the office; and

342 (iii) be in a form prescribed by the office.

343 (2) (a) For a fiscal year beginning on or after July 1, 2022, a public entity that makes a
344 retail facility incentive payment described in Subsections 11-41-103(2)(d) through (f) shall
345 submit a notification to the office on or before June 30 of the fiscal year in which the retail
346 facility incentive payment is made.

347 (b) The notification under Subsection (2)(a) shall:

348 (i) list each retail facility incentive payment under Subsections 11-41-103(2)(d)
349 through (f) that the public entity made during the fiscal year, including the date on which the
350 retail facility incentive payment was made;

351 (ii) include any other information requested by the office; and

352 (iii) be in a form prescribed by the office.

353 (3) Upon the receipt of a report from a public entity under Subsection (1), the office
354 shall review the report to determine whether each retail facility incentive payment described in
355 the report is in compliance with Section 11-41-103.

356 (4) After reviewing a public entity's report under Subsection (3), the office shall send a
357 written notice to the public entity if the office determines there is a substantial likelihood that
358 the public entity made a retail facility incentive payment in violation of Section 11-41-103.

359 (5) The notice under Subsection (4) shall include:

360 (a) a statement that describes in reasonable detail how the office made a determination
361 of violation;

362 (b) an explanation of the public entity's right to appeal the determination of violation in
363 accordance with Subsection (6); and

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

366 (i) (A) the public entity does not appeal the determination of violation in accordance

367 with Subsection (6); and

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

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

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

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

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

381 (c) The executive director shall:

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

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

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

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

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

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

393 (i) Subsection (5)(c)(i) or (ii) applies to a public entity; or

394 (ii) a public entity failed to submit the report described in Subsection (1).

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

396 (i) a description of the office's grounds for sending notice;

397 (ii) a copy of the report submitted to the office under Subsection (1), if applicable; and

398 (iii) any other information required by the state auditor for purposes of initiating an
399 audit or investigation in accordance with Section [67-3-1](#).

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

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

403 **17-27a-102. Purposes -- General land use authority -- Limitations.**

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

405 (i) provide for the health, safety, and welfare;

406 (ii) promote the prosperity;

407 (iii) improve the morals, peace, good order, comfort, convenience, and aesthetics of
408 each county and each county's present and future inhabitants and businesses;

409 (iv) protect the tax base;

410 (v) secure economy in governmental expenditures;

411 (vi) foster the state's agricultural and other industries;

412 (vii) protect both urban and nonurban development;

413 (viii) protect and ensure access to sunlight for solar energy devices;

414 (ix) provide fundamental fairness in land use regulation;

415 (x) facilitate orderly growth and allow growth in a variety of housing types; and

416 (xi) protect property values.

417 (b) [~~Except as provided in~~] Subject to Subsection (4) and Section [11-41-103](#), to

418 accomplish the purposes of this chapter, a county may enact all ordinances, resolutions, and
419 rules and may enter into other forms of land use controls and development agreements that the
420 county considers necessary or appropriate for the use and development of land within the
421 unincorporated area of the county or a designated mountainous planning district, including
422 ordinances, resolutions, rules, restrictive covenants, easements, and development agreements
423 governing:

424 (i) uses;

425 (ii) density;

426 (iii) open spaces;

427 (iv) structures;

428 (v) buildings;

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

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

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

446 (b) A county may enact an ordinance, resolution, or rule that regulates surface activity
447 incident to an oil and gas activity if the county demonstrates that the regulation:

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

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

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

459 (c) Subsection (4)(b) does not affect or impair the enforceability of any other provision

460 in the development agreement.

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

462 **17C-1-407. Limitations on tax increment.**

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

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

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

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

474 (i) "Final tax rate" means the rate used to determine the amount of taxes a taxing entity
475 levies as described in the notice to a taxpayer under Subsection 59-2-1317(2).

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

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

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

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

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

490 (e) Notwithstanding any other provision of this section, if, before tax year 2013,

491 increased tax revenue is paid to an agency without the consent of the taxing entity committee or
492 each taxing entity that is a party to an agreement under Section 17C-4-201 or 17C-5-204, and
493 notwithstanding the law at the time that the tax revenue was collected or increased:

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

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

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

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

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

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

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

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

512 **17C-1-409. Allowable uses of agency funds.**

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

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

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

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

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

522 (B) housing-related expenditures, projects, or programs as described in Section
523 17C-1-411 or 17C-1-412;

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

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

529 (E) the cost of the installation of publicly owned infrastructure and improvements
530 outside the project area from which the project area funds are collected if the board and the
531 community legislative body determine by resolution that the publicly owned infrastructure and
532 improvements benefit the project area;

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

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

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

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

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

541 or

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

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

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

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

552 (A) the board approves; and

553 (B) the community legislative body approves.

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

556 (iii) A loan described in Subsection (1)(d) is not subject to Title 10, Chapter 5,
557 Uniform Fiscal Procedures Act for Utah Towns, Title 10, Chapter 6, Uniform Fiscal
558 Procedures Act for Utah Cities, Title 17, Chapter 36, Uniform Fiscal Procedures Act for
559 Counties, or Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts.

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

563 (i) the Department of Transportation; or

564 (ii) a public transit district.

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

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

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

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

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

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

584 consents.

585 (5) For the purpose of offsetting the community's annual local contribution to the
586 Homeless Shelter Cities Mitigation Restricted Account, the total amount an agency transfers in
587 a calendar year to a community under Subsections (1)(a)(v), 17C-1-411(1)(d), and
588 17C-1-412(1)(a)(x) may not exceed the community's annual local contribution as defined in
589 Section 35A-8-606.

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

591 **63G-4-102. Scope and applicability of chapter.**

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

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

598 (b) judicial review of the action.

599 (2) This chapter does not govern:

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

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

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

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

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

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

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

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

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

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

637 (k) the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah
638 Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19,
639 Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19,
640 Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act,
641 Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used
642 Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, except
643 that this chapter governs an agency action commenced by a person authorized by law to contest
644 the validity or correctness of the notice or order;

645 (l) state agency action, to the extent required by federal statute or regulation, to be

646 conducted according to federal procedures;

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

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

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

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

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

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

659 (s) the issuance and enforcement of an initial order under Section [73-2-25](#);

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

661 (ii) an action taken by the Division of Securities under a hearing conducted under
662 Section [61-1-11.1](#), including a determination regarding the fairness of an issuance or exchange
663 of securities described in Subsection [61-1-11.1\(1\)](#);

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

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

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

671 (x) the suspension of operations under Subsection [32B-1-304\(3\)](#)[~~;~~]; or

672 (y) the issuance of a determination of violation by the Governor's Office of Economic
673 Opportunity under Section [11-41-104](#).

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

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

676 (b) challenge an agency's rule.

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

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

680 (i) encourage settlement;

681 (ii) clarify the issues;

682 (iii) simplify the evidence;

683 (iv) facilitate discovery; or

684 (v) expedite the proceeding; or

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

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

690 (b) Judicial review of a declaratory proceeding authorized by Section 63G-4-503 is
691 governed by this chapter.

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

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

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

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

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

707 (10) Notwithstanding any other provision of this section, this chapter does not apply to

708 a special adjudicative proceeding, as defined in Section [19-1-301.5](#), except to the extent
709 expressly provided in Section [19-1-301.5](#).

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

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

715 **63N-1a-301. Creation of office -- Responsibilities.**

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

717 (2) The office is:

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

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

721 (3) The office shall:

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

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

727 (c) administer and coordinate state and federal economic development grant programs;

728 (d) promote and encourage the economic, commercial, financial, industrial,
729 agricultural, and civic welfare of the state;

730 (e) promote and encourage the employment of workers in the state and the purchase of
731 goods and services produced in the state by local businesses;

732 (f) act to create, develop, attract, and retain business, industry, and commerce in the
733 state[;];

734 (i) in accordance with the statewide economic development plan and commission
735 directives; and

736 (ii) subject to the restrictions in Section [11-41-103](#);

737 (g) act to enhance the state's economy;

738 (h) act to assist strategic industries that are likely to drive future economic growth;

739 (i) assist communities in the state in developing economic development capacity and
740 coordination with other communities;

741 (j) identify areas of education and workforce development in the state that can be
742 improved to support economic and business development;

743 (k) consistent with direction from the commission, develop core strategic priorities for
744 the office, which may include:

745 (i) enhancing statewide access to entrepreneurship opportunities and small business
746 support;

747 (ii) focusing industry recruitment and expansion on strategically chosen clusters of
748 industries;

749 (iii) ensuring that in awarding competitive economic development incentives the office
750 accurately measures the benefits and costs of the incentives; and

751 (iv) assisting communities with technical support to aid those communities in
752 improving economic development opportunities;

753 (l) submit an annual written report as described in Section 63N-1a-306; and

754 (m) perform other duties as provided by the Legislature.

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

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

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

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

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

766 (6) (a) The office shall:

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

769 (ii) provide periodic updates to the commission regarding the office's efforts under

770 Subsections (3)(a) and (b).

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

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

775 **67-3-1. Functions and duties.**

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

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

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

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

783 (b) the revenues received or accrued;

784 (c) expenditures paid or accrued;

785 (d) the amount of unexpended or unencumbered balances of the appropriations to the
786 agencies, departments, divisions, commissions, and institutions; and

787 (e) the cash balances of the funds in the custody of the state treasurer.

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

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

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

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

796 (A) honesty and integrity in fiscal affairs;

797 (B) accuracy and reliability of financial statements;

798 (C) effectiveness and adequacy of financial controls; and

799 (D) compliance with the law.

800 (b) If any state entity receives federal funding, the state auditor shall ensure that the

801 audit is performed in accordance with federal audit requirements.

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

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

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

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

815 (i) the honesty and integrity of all the entity's fiscal affairs;

816 (ii) whether the entity's administrators have faithfully complied with legislative intent;

817 (iii) whether the entity's operations have been conducted in an efficient, effective, and
818 cost-efficient manner;

819 (iv) whether the entity's programs have been effective in accomplishing the intended
820 objectives; and

821 (v) whether the entity's management, control, and information systems are adequate,
822 effective, and secure.

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

825 (i) has an elected auditor; and

826 (ii) has, within the entity's last budget year, had the entity's financial statements or
827 performance formally reviewed by another outside auditor.

828 (5) The state auditor:

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

831 (b) may:

- 832 (i) subpoena witnesses and documents, whether electronic or otherwise; and
- 833 (ii) examine into any matter that the auditor considers necessary.
- 834 (6) The state auditor may require all persons who have had the disposition or
- 835 management of any property of this state or its political subdivisions to submit statements
- 836 regarding the property at the time and in the form that the auditor requires.
- 837 (7) The state auditor shall:
- 838 (a) except where otherwise provided by law, institute suits in Salt Lake County in
- 839 relation to the assessment, collection, and payment of revenues against:
- 840 (i) persons who by any means have become entrusted with public money or property
- 841 and have failed to pay over or deliver the money or property; and
- 842 (ii) all debtors of the state;
- 843 (b) collect and pay into the state treasury all fees received by the state auditor;
- 844 (c) perform the duties of a member of all boards of which the state auditor is a member
- 845 by the constitution or laws of the state, and any other duties that are prescribed by the
- 846 constitution and by law;
- 847 (d) stop the payment of the salary of any state official or state employee who:
- 848 (i) refuses to settle accounts or provide required statements about the custody and
- 849 disposition of public funds or other state property;
- 850 (ii) refuses, neglects, or ignores the instruction of the state auditor or any controlling
- 851 board or department head with respect to the manner of keeping prescribed accounts or funds;
- 852 or
- 853 (iii) fails to correct any delinquencies, improper procedures, and errors brought to the
- 854 official's or employee's attention;
- 855 (e) establish accounting systems, methods, and forms for public accounts in all taxing
- 856 or fee-assessing units of the state in the interest of uniformity, efficiency, and economy;
- 857 (f) superintend the contractual auditing of all state accounts;
- 858 (g) subject to Subsection (8)(a), withhold state allocated funds or the disbursement of
- 859 property taxes from a state or local taxing or fee-assessing unit, if necessary, to ensure that
- 860 officials and employees in those taxing units comply with state laws and procedures in the
- 861 budgeting, expenditures, and financial reporting of public funds;
- 862 (h) subject to Subsection (9), withhold the disbursement of tax money from any county,

863 if necessary, to ensure that officials and employees in the county comply with Section
864 59-2-303.1; and

865 (i) withhold state allocated funds or the disbursement of property taxes from a local
866 government entity or a limited purpose entity, as those terms are defined in Section 67-1a-15 if
867 the state auditor finds the withholding necessary to ensure that the entity registers and
868 maintains the entity's registration with the lieutenant governor, in accordance with Section
869 67-1a-15.

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

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

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

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

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

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

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

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

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

894 (iii) may prohibit a taxing or fee-assessing unit from accessing money held in an
895 account of a financial institution by:

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

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

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

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

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

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

911 (i) money held by the state; and

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

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

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

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

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

922 (a) shall authorize a disbursement by a local government entity or limited purpose
923 entity, as those terms are defined in Section 67-1a-15, or a state or local taxing or fee-assessing
924 unit if the disbursement is necessary to:

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

927 (ii) meet debt service obligations; and

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

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

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

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

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

939 (13) The state auditor shall:

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

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

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

949 (ii) a private provider under an annual or otherwise ongoing contract to provide
950 comprehensive mental health programs or services for a local mental health authority is in
951 compliance with state and local contract requirements, and state and federal law;

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

954 (iv) a private provider under an annual or otherwise ongoing contract to provide
955 comprehensive substance abuse programs or services for a local substance abuse authority is in

956 compliance with state and local contract requirements, and state and federal law.

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

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

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

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

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

973 (16) The state auditor shall:

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

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

978 (A) prescribes a uniform system of accounting and uniform budgeting and reporting
979 procedures for local districts under Title 17B, Limited Purpose Local Government Entities -
980 Local Districts, and special service districts under Title 17D, Chapter 1, Special Service
981 District Act;

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

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

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

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

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

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

993 (B) ensure that any training described in Subsection (16)(a)(v)(A) complies with Title
994 63G, Chapter 22, State Training and Certification Requirements; and

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

998 (17) (a) The following records in the custody or control of the state auditor are
999 protected records under Title 63G, Chapter 2, Government Records Access and Management
1000 Act:

1001 (i) records that would disclose information relating to allegations of personal
1002 misconduct, gross mismanagement, or illegal activity of a past or present governmental
1003 employee if the information or allegation cannot be corroborated by the state auditor through
1004 other documents or evidence, and the records relating to the allegation are not relied upon by
1005 the state auditor in preparing a final audit report;

1006 (ii) records and audit workpapers to the extent the workpapers would disclose the
1007 identity of an individual who during the course of an audit, communicated the existence of any
1008 waste of public funds, property, or manpower, or a violation or suspected violation of a law,
1009 rule, or regulation adopted under the laws of this state, a political subdivision of the state, or
1010 any recognized entity of the United States, if the information was disclosed on the condition
1011 that the identity of the individual be protected;

1012 (iii) before an audit is completed and the final audit report is released, records or drafts
1013 circulated to an individual who is not an employee or head of a governmental entity for the
1014 individual's response or information;

1015 (iv) records that would disclose an outline or part of any audit survey plans or audit
1016 program; and

1017 (v) requests for audits, if disclosure would risk circumvention of an audit.

1018 (b) The provisions of Subsections (17)(a)(i), (ii), and (iii) do not prohibit the disclosure
1019 of records or information that relate to a violation of the law by a governmental entity or
1020 employee to a government prosecutor or peace officer.

1021 (c) The provisions of this Subsection (17) do not limit the authority otherwise given to
1022 the state auditor to classify a document as public, private, controlled, or protected under Title
1023 63G, Chapter 2, Government Records Access and Management Act.

1024 (d) (i) As used in this Subsection (17)(d), "record dispute" means a dispute between the
1025 state auditor and the subject of an audit performed by the state auditor as to whether the state
1026 auditor may release a record, as defined in Section 63G-2-103, to the public that the state
1027 auditor gained access to in the course of the state auditor's audit but which the subject of the
1028 audit claims is not subject to disclosure under Title 63G, Chapter 2, Government Records
1029 Access and Management Act.

1030 (ii) The state auditor may submit a record dispute to the State Records Committee,
1031 created in Section 63G-2-501, for a determination of whether the state auditor may, in
1032 conjunction with the state auditor's release of an audit report, release to the public the record
1033 that is the subject of the record dispute.

1034 (iii) The state auditor or the subject of the audit may seek judicial review of a State
1035 Records Committee determination under Subsection (17)(d)(ii), as provided in Section
1036 63G-2-404.

1037 (18) If the state auditor conducts an audit of an entity that the state auditor has
1038 previously audited and finds that the entity has not implemented a recommendation made by
1039 the state auditor in a previous audit, the state auditor shall notify the Legislative Management
1040 Committee through the Legislative Management Committee's audit subcommittee that the
1041 entity has not implemented that recommendation.

1042 (19) The state auditor shall, with the advice and consent of the Senate, appoint the state
1043 privacy officer described in Section 67-3-13.

1044 (20) The state auditor shall report, or ensure that another government entity reports, on
1045 the financial, operational, and performance metrics for the state system of higher education and
1046 the state system of public education, including metrics in relation to students, programs, and
1047 schools within those systems.