

HB0209S01 compared with HB0209

~~deleted text~~ shows text that was in HB0209 but was deleted in HB0209S01.

inserted text shows text that was not in HB0209 but was inserted into HB0209S01.

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Representative Ken Ivory proposes the following substitute bill:

FEDERALISM COMMISSION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the Federalism Commission and federal funds.

Highlighted Provisions:

This bill:

- ▶ allows the Federalism Commission to meet as often as necessary, at the discretion of the chairs of the Federalism Commission;
- ▶ amends provisions related to the Federalism Commission's role in reviewing federal laws for compliance with the principles of federalism;
- ▶ allows the Federalism Commission to contract with a third party to evaluate federal laws for compliance with the principles of federalism;
- ▶ increases membership of the Federalism Commission;
- ▶ requires attorneys employed by the state of Utah or political subdivisions to attend a

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seminar on the principles of federalism;

- ▶ creates the Federal Program Reserve Account to augment or replace federal funding that is rejected by the Legislature or otherwise no longer available;
- ▶ ~~{amends procedures of the federal fund review process to require}~~ allows the Federalism Commission to analyze and provide recommendations on federal ~~{funding and programs}~~ funds and ~~{work in conjunction with the Executive Appropriations Committee with regard to}~~ federal programs; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63C-4a-302, as last amended by Laws of Utah 2019, Chapter 246

63C-4a-303, as last amended by Laws of Utah 2019, Chapter 246

63C-4a-304, as renumbered and amended by Laws of Utah 2013, Chapter 101

63C-4a-306, as last amended by Laws of Utah 2019, Chapter 246

63J-1-102, as last amended by Laws of Utah 2019, Chapter 182

63J-1-312, as last amended by Laws of Utah 2019, Chapter 229

63J-5-102, as last amended by Laws of Utah 2018, Chapter 467

63J-5-201, as last amended by Laws of Utah 2021, Chapter 382

63J-5-202, as last amended by Laws of Utah 2021, Chapter 382

63J-5-203, as last amended by Laws of Utah 2016, Chapter 272

~~{ **63J-5-204**, as last amended by Laws of Utah 2016, Chapter 272 }~~

~~{~~ ENACTS:

63J-1-316, Utah Code Annotated 1953

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

Section 1. Section **63C-4a-302** is amended to read:

63C-4a-302. Creation of Federalism Commission -- Membership -- Meetings --

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Staff -- Expenses.

(1) There is created the Federalism Commission, comprised of the following [~~nine~~] 12 members:

(a) the president of the Senate or the president of the Senate's designee who shall serve as cochair of the commission;

(b) [~~two~~] three other members of the Senate, appointed by the president of the Senate;

(c) the speaker of the House or the speaker of the House's designee who shall serve as cochair of the commission;

(d) [~~three~~] five other members of the House, appointed by the speaker of the House;

(e) the minority leader of the Senate or the minority leader of the Senate's designee;

and

(f) the minority leader of the House or the minority leader of the House's designee.

(2) (a) A majority of the members of the commission constitute a quorum of the commission.

(b) Action by a majority of the members of a quorum constitutes action by the commission.

~~[(3) The commission may meet up to nine times each year, unless additional meetings are approved by the Legislative Management Committee.]~~

(3) The chairs of the commission may convene the commission, in the chairs' discretion, as often as needed to carry out the duties of the commission as described in this part.

(4) The Office of Legislative Research and General Counsel shall provide staff support to the commission.

(5) Compensation and expenses of a member of the commission who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

(6) Nothing in this section prohibits the commission from closing a meeting under Title 52, Chapter 4, Open and Public Meetings Act, or prohibits the commission from complying with Title 63G, Chapter 2, Government Records Access and Management Act.

(7) The commission may, in the commission's discretion, elect to succeed to the position of any of the following under a contract that any of the following are party to, subject to applicable contractual provisions:

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- (a) the Commission on Federalism;
- (b) the Commission for the Stewardship of Public Lands; and
- (c) the Federal Funds Commission.

Section 2. Section **63C-4a-303** is amended to read:

63C-4a-303. Federalism Commission to evaluate federal law -- Curriculum on federalism.

(1) (a) In accordance with Section 63C-4a-304, the commission may evaluate a federal law:

- ~~[(a)]~~ (i) as agreed by a majority of the commission; ~~[or]~~
- ~~[(b)]~~ (ii) submitted to the commission by a council member~~[-];~~ or
- (iii) reported to the commission in accordance with Subsection (1)(b).

(b) (i) To assist the commission in the evaluation of federal law as required in this section and Section 63C-4a-304, the commission may contract with a third party to monitor federal law for possible implications on the principles of federalism.

(ii) A third party contracted to monitor federal law as described in Subsection (1)(b)(i) shall:

(A) monitor federal law for possible implications on the principles of federalism and state sovereignty; and

(B) report to the commission any law or action by the federal government that may implicate the principles of federalism or state sovereignty.

(2) The commission may request information regarding a federal law under evaluation from a United States senator or representative elected from the state.

(3) If the commission finds that a federal law is not authorized by the United States Constitution or violates the principle of federalism as described in Subsection 63C-4a-304(2), a commission cochair or the commission may:

- (a) request from a United States senator or representative elected from the state:
 - (i) information about the federal law; or
 - (ii) assistance in communicating with a federal governmental entity regarding the federal law;

(b) (i) give written notice of an evaluation made under Subsection (1) to the federal governmental entity responsible for adopting or administering the federal law; and

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(ii) request a response by a specific date to the evaluation from the federal governmental entity; [~~and~~]

(c) request a meeting, conducted in person or by electronic means, with the federal governmental entity, a representative from another state, or a United States Senator or Representative elected from the state to discuss the evaluation of federal law and any possible remedy[-]; or

(d) give written notice of an evaluation and the conclusions of the commission to any other relevant entity.

(4) The commission may recommend to the governor that the governor call a special session of the Legislature to give the Legislature an opportunity to respond to the commission's evaluation of a federal law.

(5) A commission cochair may coordinate the evaluation of and response to federal law with another state as provided in Section 63C-4a-305.

(6) The commission shall keep a current list on the Legislature's website of:

(a) a federal law that the commission evaluates under Subsection (1);

(b) an action taken by a cochair of the commission or the commission under Subsection (3);

(c) any coordination undertaken with another state under Section 63C-4a-305; and

(d) any response received from a federal government entity that was requested under Subsection (3).

(7) The commission shall develop curriculum for a seminar on the principles of federalism. The curriculum shall be available to the general public and include:

(a) fundamental principles of federalism;

(b) the sovereignty, supremacy, and jurisdiction of the individual states, including their police powers;

(c) the history and practical implementation of the Tenth Amendment to the United States Constitution;

(d) the authority and limits on the authority of the federal government as found in the United States Constitution;

(e) the relationship between the state and federal governments;

(f) methods of evaluating a federal law in the context of the principles of federalism;

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(g) how and when challenges should be made to a federal law or regulation on the basis of federalism;

(h) the separate and independent powers of the state that serve as a check on the federal government;

(i) first amendment rights and freedoms contained therein; and

(j) any other issues relating to federalism the commission considers necessary.

(8) The commission may apply for and receive grants, and receive private donations to assist in funding the creation, enhancement, and dissemination of the curriculum.

(9) The commission shall submit a report on or before November 30 of each year to the Government Operations Interim Committee and the Natural Resources, Agriculture, and Environment Interim Committee that:

(a) describes any action taken by the commission under Section 63C-4a-303; and

(b) includes any proposed legislation the commission recommends.

Section 3. Section **63C-4a-304** is amended to read:

63C-4a-304. Standard for evaluation of federal law.

(1) The commission shall [~~evaluate~~] determine whether a federal law evaluated under Section 63C-4a-303 is authorized by:

(a) United States Constitution, Article I, Section 2, to provide for the decennial census;

(b) United States Constitution, Article I, Section 4, to override state laws regulating the times, places, and manner of congressional elections, other than the place of senatorial elections;

(c) United States Constitution, Article I, Section 7, to veto bills, orders, and resolutions by Congress;

(d) United States Constitution, Article I, Section 8, to:

(i) lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States, but all duties, imposts, and excises shall be uniform throughout the United States;

(ii) borrow money on the credit of the United States;

(iii) regulate commerce with foreign nations, among the several states, and with the Indian tribes;

(iv) establish a uniform rule of naturalization and uniform laws on the subject of

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bankruptcies throughout the United States;

(v) coin money, regulate the value of coin money and of foreign coin, and fix the standard of weights and measures;

(vi) provide for the punishment of counterfeiting the securities and current coin of the United States;

(vii) establish post offices and post roads;

(viii) promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

(ix) constitute tribunals inferior to the supreme court;

(x) define and punish piracies and felonies committed on the high seas and offences against the law of nations;

(xi) declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

(xii) raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

(xiii) provide and maintain a navy;

(xiv) make rules for the government and regulation of the land and naval forces;

(xv) provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions;

(xvi) provide for organizing, arming, and disciplining the militia, and for governing the part of the militia that may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress;

(xvii) exercise exclusive legislation in all cases whatsoever, over such district, which may not exceed 10 miles square, as may, by cession of particular states and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the place shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; or

(xviii) make all laws which shall be necessary and proper for carrying into execution the powers listed in this section, and all other powers vested by the United States Constitution

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in the government of the United States, or in any department or officer of the United States;

(e) United States Constitution, Article I, Section 9, to authorize a federal officer to receive benefits from a foreign nation;

(f) United States Constitution, Article I, Section 10, to fix the pay of members of Congress and of federal officers;

(g) United States Constitution, Article II, Section 1, to:

(i) set the time for choosing electors; or

(ii) establish who succeeded to the presidency after the vice president;

(h) United States Constitution, Article II, Section 2, to:

(i) serve as Commander-in-Chief of the armed forces;

(ii) require the written opinions of executive officers;

(iii) grant reprieves and pardons;

(iv) make vacancy appointments;

(v) make treaties, subject to the advice and consent of the United States Senate;

(vi) appoint foreign affairs officers subject to the advice and consent of the United States Senate;

(vii) appoint domestic affairs officers subject either to the advice and consent of the United States Senate or pursuant to law;

(viii) appoint judges subject to the advice and consent of the United States Senate; or

(ix) authorize the president to fill designated inferior offices without senatorial consent;

(i) United States Constitution, Article II, Section 3, to:

(i) receive representatives of foreign powers;

(ii) execute the laws;

(iii) commission United States officers;

(iv) give Congress information;

(v) make recommendations to Congress;

(vi) convene Congress on extraordinary occasions; or

(vii) adjourn Congress if it cannot agree on a time;

(j) United States Constitution, Article III, Section 1, to:

(i) create exceptions to the supreme court's appellate jurisdiction;

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- (ii) fix the jurisdiction of federal courts inferior to the supreme court; or
 - (iii) declare the punishment for treason;
 - (k) United States Constitution, Article IV, Section 1, to establish the rules by which the records and judgments of states are proved in other states;
 - (l) United States Constitution, Article IV, Section 3, to:
 - (i) manage federal property;
 - (ii) dispose of federal property;
 - (iii) govern the federal territories; or
 - (iv) consent to admission of new states or the combination of existing states;
 - (m) United States Constitution, Article IV, Section 4, to defend states from invasion, insurrection, and non-republican forms of government;
 - (n) United States Constitution, Article V, Section 1, to propose constitutional amendments;
 - (o) United States Constitution, Article VI, Section 1, to prescribe the oath for federal officers;
 - (p) United States Constitution, Amendment XIII, to abolish slavery;
 - (q) United States Constitution, Amendment XIV, to guard people from certain state abuses;
 - (r) United States Constitution, Amendment XVI, to impose taxes on income from any source without having to apportion the total dollar amount of tax collected from each state according to each state's population in relation to the total national population;
 - (s) United States Constitution, Amendment XX, to revise the manner of presidential succession;
 - (t) United States Constitution, Amendment XV, XIX, XXIII, or XXIV, to extend and protect the right to vote; or
 - (u) United States Constitution, Amendment XVII, to grant a pay raise to a sitting Congress.
- (2) The commission shall [~~evaluate~~] determine whether a federal law evaluated under Section 63C-4a-303 violates the principle of federalism by:
- (a) affecting the distribution of power and responsibility among the state and national government;

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- (b) limiting the policymaking discretion of the state;
- (c) impacting a power or a right reserved to the state or its citizens by the United States Constitution, Amendment IX or X; or
- (d) impacting the sovereignty rights and interest of the state or a political subdivision to provide for the health, safety, and welfare and promote the prosperity of the state's or political subdivision's inhabitants.

(3) In the evaluation of a federal law, the commission:

(a) shall rely on:

(i) the text of the United States Constitution, as amended;

(ii) the meaning of the text of the United States Constitution, as amended, at the time of its drafting and ratification; and

(iii) a primary source document that is:

(A) directly relevant to the drafting, adoption, ratification, or initial implementation of the United States Constitution, as amended; or

(B) created by a person directly involved in the drafting, adoption, ratification, or initial implementation of the United States Constitution, as amended;

(b) may rely on other relevant sources, including federal court decisions; and

(c) is not bound by a holding by a federal court.

(4) (a) If the commission determines that a federal law is not authorized as described in this section or otherwise violates the principles of federalism:

(i) for a policy already adopted by the Legislature or for which the Legislature has already taken action, the commission ~~shall~~ may make appropriate recommendations ~~to~~ respond, including:

~~(a)~~ or take appropriate actions described in Subsection (4)(b) in response to the federal law; or

(ii) for a policy not described in Subsection (4)(a)(i), the commission may, in consultation with the speaker of the House of Representative and the president of the Senate, make appropriate recommendations or take appropriate actions described in Subsection (4)(b) in response to the federal law.

(b) An action or recommendation of the commission as described in Subsection (4)(a) in response to a federal law that the commission determines is not authorized in this section or

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otherwise violates the principles of federalism include:

- (i) a convention of the states pursuant to Article V of the United States Constitution;
- (~~f~~~~b~~)~~ii~~) enacting state laws to ~~{refuse cooperation or acceptance of the federal law;~~
~~(c)~~ assert, defend, and preserve the constitutional allocation and balance of governing powers between the federal government and the state;
- (iii) legal challenges of the federal action;
- (~~f~~~~d~~)~~iv~~) ~~outreach, coordination, or~~ lobbying with the state's congressional delegation and Congress as a whole;
- (~~f~~~~e~~)~~v~~) outreach and coordination with state and local government officers and agencies;
- (vi) initiating or joining ~~{state-coordinated efforts of public and political education;~~
~~(f)~~ writing letters to} multi-state action;
- (vii) initiating or coordinating public education efforts;
- (viii) correspondence with relevant federal agencies or leaders; or
- (~~f~~~~g~~)~~ix~~) no action.

Section 4. Section **63C-4a-306** is amended to read:

63C-4a-306. Course on federalism required.

- (1) This section applies to:
 - (a) all political subdivisions of the state;
 - (b) all agencies of the state;
 - (c) the Attorney General's office; and
 - (d) the Office of Legislative Research and General Counsel.
- (2) An employing entity listed in Subsection (1) shall:
 - (a) appoint at least one designee to which all questions and inquiries regarding federalism shall be directed [~~-. The designee shall be required~~]; and
 - (b) require each attorney employed by the employing entity described in Subsection (1) to attend a seminar on the principles of federalism developed pursuant to Subsection 63C-4a-303(7) at least once in every two-year period.
- (3) The designee may complete the requirements of this section by attending a seminar in person or online.

Section 5. Section **63J-1-102** is amended to read:

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63J-1-102. Definitions.

As used in this chapter:

(1) "Agency" means a unit of accounting, typically associated with a department, division, board, council, committee, institution, office, bureau, or other similar administrative unit of state government, that includes line items and programs.

(2) "Budget execution plan" means a proposal submitted by an administrative unit of state government to the Division of Finance enumerating expected revenues and authorized expenditures within line items and among programs.

(3) "Debt service" means the money that is required annually to cover the repayment of interest and principal on state debt.

(4) (a) "Dedicated credits" means collections by an agency that fund agency operations.

(b) "Dedicated credits" includes:

(i) assessments;

(ii) sales of goods and materials;

(iii) sales of services;

(iv) permits, licenses, and other fees;

(v) fines, penalties, and forfeitures; and

(vi) rental revenue.

(c) "Dedicated credits" does not include:

(i) expendable receipts;

(ii) revenues otherwise designated by law for deposit into another fund or account;

(iii) federal revenues and the related pass through; or

(iv) revenues that are not deposited in governmental funds.

(5) (a) "Expendable receipts" means collections by an agency for expenditures that are limited by a nonstate entity that provides the funds.

(b) "Expendable receipts" includes:

(i) grants;

(ii) state matches for federal revenues paid by a nonstate entity; and

(iii) rebates, including pharmacy rebates, that have similar restrictions on expenditures as the original program.

(c) "Expendable receipts" does not include:

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- (i) dedicated credits;
 - (ii) revenues otherwise designated by law for deposit into another fund or account;
 - (iii) federal revenues and the related pass through; or
 - (iv) revenues that are not deposited into governmental funds.
- (6) "Federal revenues" means collections by an agency from a federal source that are

deposited into an account for expenditure by the agency.

(7) "Federalism Commission" means the Federalism Commission created in Section 63C-4a-302.

~~(7)~~ (8) "Free revenue" includes:

(a) collections that are required by law to be deposited in:

- (i) the General Fund;
- (ii) the Education Fund;
- (iii) the Uniform School Fund; or
- (iv) the Transportation Fund;

(b) collections that are not otherwise designated by law;

(c) collections that are not externally restricted; and

(d) collections that are not included in an approved budget execution plan.

~~(8)~~ (9) "Grant" means the same as that term is defined in Section 63J-7-101.

~~(9)~~ (10) (a) "Item of appropriation" means an authorization of expenditure contained in legislation that appropriates funds and includes the following:

(i) the name of the agency and line item to which authorization is granted; and

(ii) sources of finance from which authorization is granted and associated amounts

authorized.

(b) "Item of appropriation" also includes:

- (i) a schedule of programs;
- (ii) intent language;
- (iii) approved full-time equivalent employment;
- (iv) authorized capital outlay; and
- (v) other conditions of appropriation.

~~(10)~~ (11) "Line item" means a unit of accounting, typically representing an administrative unit of state government within an agency, that contains one or more programs.

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~~[(11)]~~ (12) "Major revenue types" means:

- (a) free revenue;
- (b) federal revenue;
- (c) restricted revenue;
- (d) dedicated credits; and
- (e) expendable receipts.

~~[(12)]~~ (13) "Program" means a unit of accounting included on a schedule of programs within a line item used to track budget authorizations, collections, and expenditures on specific purposes or functions.

~~[(13)]~~ (14) "Restricted revenue" means collections that are:

- (a) deposited, by law, into a separate fund, subfund, or account; and
- (b) designated for a specific program or purpose.

~~[(14)]~~ (15) "Schedule of programs" means a list of programs and associated authorization amounts within an item of appropriation.

Section 6. Section **63J-1-312** is amended to read:

63J-1-312. Establishing a General Fund Budget Reserve Account -- Providing for deposits and expenditures from the account -- Providing for interest generated by the account.

(1) As used in this section:

(a) "Education Fund budget deficit" means a situation where appropriations made by the Legislature from the Education Fund for a fiscal year exceed the estimated revenues adopted by the Executive Appropriations Committee of the Legislature for the Education Fund in that fiscal year.

(b) "General Fund appropriations" means the sum of the spending authority for a fiscal year that is:

- (i) granted by the Legislature in all appropriation acts and bills; and
- (ii) identified as coming from the General Fund.

(c) "General Fund budget deficit" means a situation where General Fund appropriations made by the Legislature for a fiscal year exceed the estimated revenues adopted by the Executive Appropriations Committee of the Legislature for the General Fund in that fiscal year.

(d) "General Fund revenue surplus" means a situation where actual General Fund

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revenues collected in a completed fiscal year exceed the estimated revenues for the General Fund for that fiscal year that were adopted by the Executive Appropriations Committee of the Legislature.

(e) "Operating deficit" means that, at the end of the fiscal year, the unassigned fund balance in the General Fund is less than zero.

(2) There is created within the General Fund a restricted account to be known as the General Fund Budget Reserve Account, which is designated to receive the legislative appropriations and the surplus revenue required to be deposited into the account by this section.

(3) (a) (i) Except as provided in Subsection (3)(a)(ii), at the end of any fiscal year in which the Division of Finance, in consultation with the Legislative Fiscal Analyst and in conjunction with the completion of the annual audit by the state auditor, determines that there is a General Fund revenue surplus, the Division of Finance shall transfer:

(A) 25% of the General Fund revenue surplus to the General Fund Budget Reserve Account[-]; and

(B) 25% of the General Fund revenue surplus to the Federal Program Reserve Account created in Section 63J-1-316.

(ii) If the transfer of 25% of the General Fund revenue surplus to the General Fund Budget Reserve Account would cause the balance in the account to exceed 9% of General Fund appropriations for the fiscal year in which the revenue surplus occurred, the Division of Finance shall transfer only those funds necessary to ensure that the balance in the account equals 9% of General Fund appropriations for the fiscal year in which the General Fund revenue surplus occurred.

(iii) The Division of Finance shall calculate the amount to be transferred under this Subsection (3)(a):

(A) after making the transfer of General Fund revenue surplus to the Medicaid Growth Reduction and Budget Stabilization Account, as provided in Section 63J-1-315;

(B) before transferring from the General Fund revenue surplus any other year-end contingency appropriations, year-end set-asides, or other year-end transfers required by law; and

(C) excluding any direct legislative appropriation made to the General Fund Budget Reserve Account for the fiscal year.

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(b) (i) Except as provided in Subsection (3)(b)(ii), in addition to Subsection (3)(a)(i), if a General Fund revenue surplus exists and if, within the last 10 years, the Legislature has appropriated any money from the General Fund Budget Reserve Account that has not been replaced by appropriation or as provided in this Subsection (3)(b), the Division of Finance shall transfer up to 25% more of the General Fund revenue surplus to the General Fund Budget Reserve Account to replace the amounts appropriated, until direct legislative appropriations, if any, and transfers from the General Fund revenue surplus under this Subsection (3)(b) have replaced the appropriations from the account.

(ii) If the transfer under Subsection (3)(b)(i) would cause the balance in the account to exceed 9% of General Fund appropriations for the fiscal year in which the revenue surplus occurred, the Division of Finance shall transfer only those funds necessary to ensure that the balance in the account equals 9% of General Fund appropriations for the fiscal year in which the revenue surplus occurred.

(iii) The Division of Finance shall calculate the amount to be transferred under this Subsection (3)(b):

(A) after making the transfer of General Fund revenue surplus to the Medicaid Growth Reduction and Budget Stabilization Account, as provided in Section 63J-1-315;

(B) before transferring from the General Fund revenue surplus any other year-end contingency appropriations, year-end set-asides, or other year-end transfers required by law; and

(C) excluding any direct legislative appropriation made to the General Fund Budget Reserve Account for the fiscal year.

(c) For appropriations made by the Legislature to the General Fund Budget Reserve Account, the Division of Finance shall treat those appropriations, unless otherwise specified in the appropriation, as replacement funds for appropriations made from the account if funds were appropriated from the General Fund Budget Reserve Account within the past 10 years and have not yet been replaced.

(4) The Legislature may appropriate money from the General Fund Budget Reserve Account only to:

(a) resolve a General Fund budget deficit, for the fiscal year in which the General Fund budget deficit occurs;

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(b) pay some or all of state settlement agreements approved under Title 63G, Chapter 10, State Settlement Agreements Act;

(c) pay claims approved under Section 63G-9-304;

(d) pay retroactive tax refunds; or

(e) resolve an Education Fund budget deficit~~[-or]~~;

~~[(f) finance an existing federally funded program or activity when:]~~

~~[(i) the federal funds expected to fund the federal program or activity are not available to fund the program or activity; and]~~

~~[(ii) the Legislature and governor concurrently determine that the program or activity is essential:]~~

(5) Interest generated from investments of money in the General Fund Budget Reserve Account shall be deposited into the General Fund.

Section 7. Section **63J-1-316** is enacted to read:

63J-1-316. Establishing a Federal Program Reserve Account.

(1) There is created within the General Fund a restricted account to be known as the Federal Program Reserve Account.

(2) The Federal Program Reserve Account shall consist of money from the following revenue sources:

(a) money deposited into the account as described in Section 63J-1-312;

(b) appropriations made by the Legislature; and

(c) interest generated by the Federal Program Reserve Account.

(3) The Legislature may appropriate money from the Federal Program Reserve Account only to finance an existing federally funded program or activity when:

(a) the federal funds expected to fund the federal program or activity are rejected or are otherwise not available to fund the program or activity; and

(b) the Legislature and governor concurrently determine that the program or activity is essential.

Section 8. Section **63J-5-102** is amended to read:

63J-5-102. Definitions.

(1) As used in this chapter:

(a) (i) "Agency" means a department, division, committee, commission, council, court,

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or other administrative subunit of the state.

(ii) "Agency" includes:

- (A) executive branch entities;
- (B) judicial branch entities; and
- (C) the State Board of Education.

(iii) "Agency" does not mean higher education institutions or political subdivisions.

(b) (i) "Federal funds" means cash or other money received from the United States government or from other individuals or entities for or on behalf of the United States and deposited with the state treasurer or any agency of the state.

(ii) "Federal funds" includes federal assistance and federal assistance programs, however described.

(iii) "Federal funds" does not include money received from the United States government to reimburse the state or local government entity for money expended by the state or local government entity.

(c) "Federal funds reauthorization" means:

(i) the formal submission from an agency to the federal government applying for or seeking reauthorization of federal funds which the state is currently receiving;

(ii) the formal submission from an agency to the federal government applying for or seeking reauthorization to participate in a federal program in which the state is currently participating that will result in federal funds being transferred to an agency; or

(iii) that period after the first year of a previously authorized and awarded grant or funding award, during which federal funds are disbursed or are scheduled to be disbursed after the first year because the term of the grant or financial award extends for more than one year.

(d) (i) "Federal funds request summary" means a document detailing:

(A) the amount of money that is being requested or is available to be received by the state from the federal government for each federal funds reauthorization or new federal funds request;

(B) those federal funds reauthorizations and new federal funds requests that are included as part of the agency's proposed budget for the fiscal year, and the amount of those requests;

(C) the amount of new state money, if any, that will be required to receive the federal

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funds or participate in the federal program;

(D) the number of additional permanent full-time employees, additional permanent part-time employees, or combination of additional permanent full-time employees and additional permanent part-time employees, if any, that the state estimates are needed in order to receive the federal funds or participate in the federal program; and

(E) any requirements that the state must meet as a condition for receiving the federal funds or participating in the federal program.

(ii) "Federal funds request summary" includes, if available:

(A) the letter awarding an agency a grant of federal funds or other official documentation awarding an agency a grant of federal funds; and

(B) a document detailing federal maintenance of effort requirements.

(e) "Federal maintenance of effort requirements" means any matching, level of effort, or earmarking requirements, as defined in Office of Management and Budget requirements, that are imposed on an agency as a condition of receiving federal funds.

(f) "Federalism Commission" means the Federalism Commission created in Section 63C-4a-302.

~~[(f)]~~ (g) (i) "Intergovernmental transfer program" means an existing reimbursement program or category that is authorized by the Medicaid state plan or waiver authority for intergovernmental transfers.

(ii) "Intergovernmental transfer program" does not include the addition of a provider to an existing intergovernmental transfer program.

~~[(g)]~~ (h) "Local education agency" or "LEA" means:

(i) a school district;

(ii) a charter school; or

(iii) the Utah Schools for the Deaf and the Blind.

~~[(h)]~~ (i) "New federal funds" means:

(i) federal assistance or other federal funds that are available from the federal government that:

(A) the state is not currently receiving; or

(B) exceed the federal funds amount most recently approved by the Legislature by more than 25% for a federal grant or program in which the state is currently participating;

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(ii) a federal assistance program or other federal program in which the state is not currently participating; or

(iii) a one-time TANF request.

~~(j)~~ (j) "New federal funds request" means:

(i) the formal submission from an agency to the federal government:

(A) applying for or otherwise seeking to obtain new federal funds; or

(B) applying for or seeking to participate in a new federal program that will result in federal funds being transferred to an agency; or

(ii) a one-time TANF request.

~~(k)~~ (k) (i) "New state money" means money, whether specifically appropriated by the Legislature or not, that the federal government requires Utah to expend as a condition for receiving the federal funds or participating in the federal program.

(ii) "New state money" includes money expended to meet federal maintenance of effort requirements.

~~(l)~~ (l) "One-time TANF request" means a proposed expenditure by the Department of Workforce Services from its reserves of federal Temporary Assistance for Needy Families funds:

(i) for a project or program that will last for a fixed amount of time and is not an ongoing project or program of the Department of Workforce Services; and

(ii) that is greater than \$1,000,000 over the amount most recently approved by the Legislature.

~~(m)~~ (m) (i) "Pass-through federal funds" means federal funds provided to an agency that are distributed to local governments or private entities without being used by the agency.

(ii) "Pass-through federal funds" does not include federal funds provided to the State Board of Education that are distributed to a local education agency or other subrecipient without being used by the State Board of Education.

~~(n)~~ (n) "State" means the state of Utah and all of its agencies, and any administrative subunits of those agencies.

(2) When this chapter describes an employee as a "permanent full-time employee" or a "permanent part-time employee," it is not intended to, and may not be construed to, affect the employee's status as an at-will employee.

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Section 9. Section **63J-5-201** is amended to read:

63J-5-201. Legislative appropriation subcommittees to review certain federal funds reauthorizations -- Executive appropriations review -- Legislative approval.

(1) The Governor's Office of Planning and Budget shall annually prepare and submit a federal funds request summary for each agency to the Legislative Fiscal Analyst at the same time the governor submits the confidential draft budget under Section 63J-1-201.

(2) (a) The Legislative Fiscal Analyst, as directed by the Executive Appropriations Committee, may include federal funds in the base budget appropriations act or acts, when those acts are prepared as provided in JR3-2-402.

(b) The Legislative Fiscal Analyst shall submit a federal funds request summary for each agency to the ~~the~~ legislative appropriations subcommittee responsible for that agency's budget ~~the~~ Federalism Commission for review during each annual general session and to the Federalism Commission.

(3) ~~the~~ (a) Each legislative appropriations subcommittee ~~the~~ The Federalism Commission shall review the federal funds request summary and may:

~~(a)~~ (i) recommend that the agency accept the federal funds or participate in the federal program for the fiscal year under consideration; or

~~(b)~~ (ii) recommend that the agency not accept the federal funds or not participate in the federal program for the fiscal year under consideration.

(b) The Federalism Commission may review federal funds requests and provide recommendations regarding the possible implications of the principles of federalism and state sovereignty.

(4) The Legislative Executive Appropriations Committee shall:

(a) review each ~~the~~ subcommittee's ~~the~~ recommendation ~~from the~~ Federalism Commission;

(b) determine whether or not the agency should be authorized to accept the federal funds or participate in the federal program; and

(c) direct the Legislative Fiscal Analyst to include or exclude those federal funds and federal programs in an annual appropriations act for approval by the Legislature.

(5) Legislative approval of an appropriations act containing federal funds constitutes legislative approval of the federal grants or awards associated with the federal funds for the

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purposes of compliance with the requirements of this chapter.

Section 10. Section **63J-5-202** is amended to read:

63J-5-202. Governor to approve certain new federal funds requests.

(1) (a) Before obligating the state to accept or receive new federal funds or to participate in a new federal program, and no later than three months after submitting a new federal funds request, and, where possible, before formally submitting the new federal funds request, an executive branch agency shall submit a federal funds request summary to the governor or the governor's designee for approval or rejection when:

(i) the state will receive total payments of \$1,000,000 or less per year if the new federal funds request is approved;

(ii) receipt of the new federal funds will require no additional permanent full-time employees, permanent part-time employees, or combination of additional permanent full-time employees and permanent part-time employees; and

(iii) no new state money will be required to match the new federal funds or to implement the new federal program for which the grant is issued.

(b) The Governor's Office of Planning and Budget shall report each new federal funds request that is approved by the governor or the governor's designee and each new federal funds request granted by the federal government to:

(i) the Legislature's Executive Appropriations Committee;

(ii) the Federalism Commission;

~~[(ii)]~~ (iii) the Office of the Legislative Fiscal Analyst; and

~~[(iii)]~~ (iv) the Office of Legislative Research and General Counsel.

(2) The governor or the governor's designee shall approve or reject each new federal funds request submitted under the authority of this section.

(3) (a) If the governor or the governor's designee approves the new federal funds request, the executive branch agency may accept the new federal funds or participate in the new federal program.

(b) If the governor or the governor's designee rejects the new federal funds request, the executive branch agency may not accept the new federal funds or participate in the new federal program.

(4) If an executive branch agency fails to obtain the governor's or the governor's

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designee's approval under this section, the governor may require the agency to:

- (a) withdraw the new federal funds request;
- (b) return the federal funds;
- (c) withdraw from the federal program; or
- (d) any combination of Subsections (4)(a), (4)(b), and (4)(c).

(5) If a letter or other official documentation awarding an agency a grant of federal funds is not available to be included in a federal funds request summary submitted to the Governor's Office of Planning and Budget under this section, the agency shall submit to the Governor's Office of Planning and Budget the letter or other official documentation awarding the agency a grant of federal funds before expending the federal funds granted.

Section 11. Section **63J-5-203** is amended to read:

63J-5-203. Judicial council to approve certain new federal funds requests.

(1) (a) Before obligating the state to accept or receive new federal funds or to participate in a new federal program, and no later than three months after submitting a new federal funds request, and, where possible, before formally submitting the new federal funds request, a judicial branch agency shall submit a federal funds request summary to the Judicial Council for its approval or rejection when:

(i) the state will receive total payments of \$1,000,000 or less per year if the new federal funds request is approved;

(ii) receipt of the new federal funds will require no additional permanent full-time employees, additional permanent part-time employees, or combination of additional permanent full-time employees and permanent part-time employees; and

(iii) no new state money will be required to match the new federal funds or to implement the new federal program for which the grant is issued.

(b) The Judicial Council shall report each new federal funds request that is approved by it and each new federal funds request granted by the federal government to:

(i) the Legislature's Executive Appropriations Committee;

(ii) the Federalism Commission;

~~[(ii)]~~ (iii) the Office of the Legislative Fiscal Analyst; and

~~[(iii)]~~ (iv) the Office of Legislative Research and General Counsel.

(2) The Judicial Council shall approve or reject each new federal funds request

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submitted to it under the authority of this section.

(3) (a) If the Judicial Council approves the new federal funds request, the judicial branch agency may accept the new federal funds or participate in the new federal program.

(b) If the Judicial Council rejects the new federal funds request, the judicial branch agency may not accept the new federal funds or participate in the new federal program.

(4) If a judicial branch agency fails to obtain the Judicial Council's approval under this section, the Judicial Council may require the agency to:

- (a) withdraw the new federal funds request;
- (b) return the federal funds;
- (c) withdraw from the federal program; or
- (d) any combination of Subsections (4)(a), (4)(b), and (4)(c).

(5) If a letter or other official documentation awarding a judicial branch agency a grant of federal funds is not available to be included in a federal funds request summary submitted to the Judicial Council under this section, the judicial branch agency shall submit to the Judicial Council the letter or other official documentation awarding the judicial branch agency a grant of federal funds before expending the federal funds granted.

~~{ Section 12. Section 63J-5-204 is amended to read:~~

~~63J-5-204. Legislative review and approval of certain federal funds requests:~~

~~(1) As used in this section:~~

~~(a) "High impact federal funds request" means a new federal funds request that will or could:~~

~~(i) result in the state receiving total payments of \$10,000,000 or more per year from the federal government;~~

~~(ii) require the state to add 11 or more permanent full-time employees, 11 or more permanent part-time employees, or combination of permanent full-time and permanent part-time employees equal to 11 or more in order to receive the new federal funds or participate in the new federal program; or~~

~~(iii) require the state to expend more than \$1,000,000 of new state money in a fiscal year in order to receive or administer the new federal funds or participate in the new federal program.~~

~~(b) "Medium impact federal funds request" means a new federal funds request that will~~

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or could:

~~—— (i) result in the state receiving total payments of more than \$1,000,000 but less than \$10,000,000 per year from the federal government;~~

~~—— (ii) require the state to add more than zero but less than 11 permanent full-time employees, more than zero but less than 11 permanent part-time employees, or a combination of permanent full-time employees and permanent part-time employees equal to more than zero but less than 11 in order to receive or administer the new federal funds or participate in the new federal program; or~~

~~—— (iii) require the state to expend \$1 to \$1,000,000 of new state money in a fiscal year in order to receive or administer the new federal funds or participate in the new federal program:~~

~~—— (2) (a) (i) Before obligating the state to accept or receive new federal funds or to participate in a new federal program under a medium impact federal funds request that was not authorized during a legislative session as provided in Section 63J-5-201, an agency shall:~~

~~—— (A) submit the federal funds request summary to the governor, the Judicial Council, or the State Board of Education, as appropriate, for approval or rejection; and~~

~~—— (B) if the governor, the Judicial Council, or the State Board of Education approves the new federal funds request, submit the federal funds request summary to the Legislative Executive Appropriations Committee [for its] and the Federalism Commission for review and recommendations:~~

~~—— (ii) The procedures required under Subsection (2)(a)(i) shall be performed, if possible, before the date that the medium impact funds request is formally submitted, but not later than three months after the date of formal submission:~~

~~—— (b) The Legislative Executive Appropriations Committee, in consultation with the Federalism Commission, shall review the federal funds request summary and may:~~

~~—— (i) recommend that the agency accept the new federal funds;~~

~~—— (ii) recommend that the agency not accept the new federal funds; or~~

~~—— (iii) recommend to the governor that the governor call a special session of the Legislature to review and approve or reject the acceptance of the new federal funds:~~

~~—— (3) (a) (i) Before obligating the state to accept or receive new federal funds or to participate in a new federal program under a high impact federal funds request that was not authorized during a legislative session as provided in Section 63J-5-201, an agency shall:~~

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~~—— (A) submit the federal funds request summary to the governor, the Judicial Council, or the State Board of Education, as appropriate, for approval or rejection; and~~

~~—— (B) if the governor, the Judicial Council, or the State Board of Education approves the new federal funds request, submit the federal funds request summary to the Legislature for its approval or rejection in an annual general session or a special session:~~

~~—— (i) The procedures required under Subsection (3)(a)(i) shall be performed, if possible, before the date that the high impact funds request is formally submitted, but not later than three months after the date of formal submission:~~

~~—— (b) (i) If the Legislature approves the new federal funds request, the agency may accept the new federal funds or participate in the new federal program:~~

~~—— (ii) If the Legislature fails to approve the new federal funds request, the agency may not accept the new federal funds or participate in the new federal program:~~

~~—— (4) If an agency fails to comply with the procedures of this section or fails to obtain the Legislature's approval:~~

~~—— (a) the governor, the Judicial Council, or the State Board of Education, as appropriate, may require the agency to withdraw the new federal funds request or refuse or return the new federal funds;~~

~~—— (b) the Legislature may, if federal law allows, opt out or decline to participate in the new federal program or decline to receive the new federal funds; or~~

~~—— (c) the Legislature may reduce the agency's General Fund appropriation in an amount less than, equal to, or greater than the amount of federal funds received by the agency:~~

~~—— (5) If a letter or other official documentation awarding an agency a grant of federal funds is not available to be included in the agency's federal funds request summary to the governor, the Judicial Council, or the State Board of Education, as appropriate, under this section, the agency shall submit to the governor, the Judicial Council, or the State Board of Education, as appropriate, the letter or other official documentation awarding the agency a grant of federal funds before expending the federal funds granted.~~

~~‡~~