

HIGHER EDUCATION FUNDING AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Evan J. Vickers

House Sponsor: Val L. Peterson

LONG TITLE

General Description:

This bill modifies provisions related to higher education.

Highlighted Provisions:

This bill:

- ▶ authorizes certain public and private entities to provide money to the Higher Education Student Success Endowment;
- ▶ creates the Utah Higher Education Savings Board of Trustees to act as fiduciary for the Utah Educational Savings Plan;
- ▶ allows the board to hold a closed meeting to discuss certain fiduciary or commercial information; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

52-4-103, as last amended by Laws of Utah 2022, Chapter 422

52-4-205, as last amended by Laws of Utah 2022, Chapters 237, 290, 332, 335, 422, and 478

53B-1-301, as last amended by Laws of Utah 2022, Chapters 147, 274 and 370

53B-7-801, as enacted by Laws of Utah 2022, Chapter 186

- 30 **53B-7-802**, as enacted by Laws of Utah 2022, Chapter 186
- 31 **53B-8a-102.5**, as last amended by Laws of Utah 2020, Chapter 365
- 32 **53B-8a-104**, as last amended by Laws of Utah 2010, Chapter 6
- 33 **53B-8a-105**, as last amended by Laws of Utah 2011, Chapter 46

34 ENACTS:

- 35 **53B-7-804**, Utah Code Annotated 1953
- 36 **53B-7-805**, Utah Code Annotated 1953

37 REPEALS:

- 38 **53B-11-101**, as enacted by Laws of Utah 1987, Chapter 167
- 39 **53B-11-102**, as last amended by Laws of Utah 1989, Chapter 22
- 40 **53B-11-103**, as enacted by Laws of Utah 1987, Chapter 167
- 41 **53B-12-101**, as last amended by Laws of Utah 2022, Chapter 186
- 42 **53B-12-102**, as last amended by Laws of Utah 2020, Chapter 365
- 43 **53B-12-103**, as enacted by Laws of Utah 1987, Chapter 167
- 44 **53B-12-104**, as last amended by Laws of Utah 2010, Chapter 324
- 45 **53B-12-105**, as enacted by Laws of Utah 1987, Chapter 167
- 46 **53B-12-106**, as enacted by Laws of Utah 1987, Chapter 167
- 47 **53B-12-107**, as last amended by Laws of Utah 2019, Chapter 324
- 48 **53B-12-108**, as enacted by Laws of Utah 1987, Chapter 167
- 49 **53B-12-109**, as enacted by Laws of Utah 2022, Chapter 186



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

52 Section 1. Section **52-4-103** is amended to read:

53 **52-4-103. Definitions.**

54 As used in this chapter:

- 55 (1) "Anchor location" means the physical location from which:
- 56 (a) an electronic meeting originates; or
- 57 (b) the participants are connected.

58 (2) "Capitol hill complex" means the grounds and buildings within the area bounded by
59 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard in Salt Lake
60 City.

61 (3) (a) "Convening" means the calling together of a public body by a person authorized
62 to do so for the express purpose of discussing or acting upon a subject over which that public
63 body has jurisdiction or advisory power.

64 (b) "Convening" does not include the initiation of a routine conversation between
65 members of a board of trustees of a large public transit district if the members involved in the
66 conversation do not, during the conversation, take a tentative or final vote on the matter that is
67 the subject of the conversation.

68 (4) "Electronic meeting" means a public meeting convened or conducted by means of a
69 conference using electronic communications.

70 (5) "Electronic message" means a communication transmitted electronically, including:

71 (a) electronic mail;

72 (b) instant messaging;

73 (c) electronic chat;

74 (d) text messaging, as that term is defined in Section [76-4-401](#); or

75 (e) any other method that conveys a message or facilitates communication
76 electronically.

77 (6) "Fiduciary or commercial information" means information:

78 (a) related to any subject if disclosure:

79 (i) would conflict with a fiduciary obligation; or

80 (ii) is prohibited by insider trading provisions; or

81 (b) that is commercial in nature including:

82 (i) account owners or borrowers;

83 (ii) demographic data;

84 (iii) contracts and related payments;

85 (iv) negotiations;

- 86 (v) proposals or bids;
- 87 (vi) investments;
- 88 (vii) management of funds;
- 89 (viii) fees and charges;
- 90 (ix) plan and program design;
- 91 (x) investment options and underlying investments offered to account owners;
- 92 (xi) marketing and outreach efforts;
- 93 (xii) financial plans; or
- 94 (xiii) reviews and audits excluding the final report required under Section [53B-8a-111](#).

95 ~~[(6)]~~ (7) (a) "Meeting" means the convening of a public body or a specified body, with
96 a quorum present, including a workshop or an executive session, whether in person or by
97 means of electronic communications, for the purpose of discussing, receiving comments from
98 the public about, or acting upon a matter over which the public body or specific body has
99 jurisdiction or advisory power.

100 (b) "Meeting" does not mean:

- 101 (i) a chance gathering or social gathering;
- 102 (ii) a convening of the State Tax Commission to consider a confidential tax matter in
103 accordance with Section [59-1-405](#); or
- 104 (iii) a convening of a three-member board of trustees of a large public transit district as
105 defined in Section [17B-2a-802](#) if:

106 (A) the board members do not, during the conversation, take a tentative or final vote on
107 the matter that is the subject of the conversation; or

108 (B) the conversation pertains only to day-to-day management and operation of the
109 public transit district.

110 (c) "Meeting" does not mean the convening of a public body that has both legislative
111 and executive responsibilities if:

- 112 (i) no public funds are appropriated for expenditure during the time the public body is
113 convened; and

114 (ii) the public body is convened solely for the discussion or implementation of
115 administrative or operational matters:

- 116 (A) for which no formal action by the public body is required; or
- 117 (B) that would not come before the public body for discussion or action.

118 [~~7~~] (8) "Monitor" means to hear or observe, live, by audio or video equipment, all of
119 the public statements of each member of the public body who is participating in a meeting.

120 [~~8~~] (9) "Participate" means the ability to communicate with all of the members of a
121 public body, either verbally or electronically, so that each member of the public body can hear
122 or observe the communication.

123 [~~9~~] (10) (a) "Public body" means:

124 (i) any administrative, advisory, executive, or legislative body of the state or its
125 political subdivisions that:

- 126 (A) is created by the Utah Constitution, statute, rule, ordinance, or resolution;
- 127 (B) consists of two or more persons;
- 128 (C) expends, disburses, or is supported in whole or in part by tax revenue; and
- 129 (D) is vested with the authority to make decisions regarding the public's business; or

130 (ii) any administrative, advisory, executive, or policymaking body of an association, as
131 that term is defined in Section 53G-7-1101, that:

- 132 (A) consists of two or more persons;
- 133 (B) expends, disburses, or is supported in whole or in part by dues paid by a public
134 school or whose employees participate in a benefit or program described in Title 49, Utah State
135 Retirement and Insurance Benefit Act; and

136 (C) is vested with authority to make decisions regarding the participation of a public
137 school or student in an interscholastic activity, as that term is defined in Section 53G-7-1101.

138 (b) "Public body" includes:

139 (i) an interlocal entity or joint or cooperative undertaking, as those terms are defined in
140 Section 11-13-103;

141 (ii) a governmental nonprofit corporation as that term is defined in Section 11-13a-102;

- 142 (iii) the Utah Independent Redistricting Commission; and
- 143 (iv) a project entity, as that term is defined in Section 11-13-103.
- 144 (c) "Public body" does not include:
 - 145 (i) a political party, a political group, or a political caucus;
 - 146 (ii) a conference committee, a rules committee, or a sifting committee of the
 - 147 Legislature;
 - 148 (iii) a school community council or charter trust land council, as that term is defined in
 - 149 Section 53G-7-1203;
 - 150 (iv) a taxed interlocal entity, as that term is defined in Section 11-13-602, if the taxed
 - 151 interlocal entity is not a project entity; or
 - 152 (v) the following Legislative Management subcommittees, which are established in
 - 153 Section 36-12-8, when meeting for the purpose of selecting or evaluating a candidate to
 - 154 recommend for employment, except that the meeting in which a subcommittee votes to
 - 155 recommend that a candidate be employed shall be subject to the provisions of this act:
 - 156 (A) the Research and General Counsel Subcommittee;
 - 157 (B) the Budget Subcommittee; and
 - 158 (C) the Audit Subcommittee.
- 159 ~~[(10)]~~ (11) "Public statement" means a statement made in the ordinary course of
- 160 business of the public body with the intent that all other members of the public body receive it.
- 161 ~~[(11)]~~ (12) (a) "Quorum" means a simple majority of the membership of a public body,
- 162 unless otherwise defined by applicable law.
 - 163 (b) "Quorum" does not include a meeting of two elected officials by themselves when
 - 164 no action, either formal or informal, is taken.
 - 165 ~~[(12)]~~ (13) "Recording" means an audio, or an audio and video, record of the
 - 166 proceedings of a meeting that can be used to review the proceedings of the meeting.
 - 167 ~~[(13)]~~ (14) "Specified body":
 - 168 (a) means an administrative, advisory, executive, or legislative body that:
 - 169 (i) is not a public body;

- 170 (ii) consists of three or more members; and
- 171 (iii) includes at least one member who is:
- 172 (A) a legislator; and
- 173 (B) officially appointed to the body by the president of the Senate, speaker of the
- 174 House of Representatives, or governor; and
- 175 (b) does not include a body listed in Subsection (9)(c)(ii) or (9)(c)(v).

176 ~~[(14)]~~ (15) "Transmit" means to send, convey, or communicate an electronic message
177 by electronic means.

178 Section 2. Section **52-4-205** is amended to read:

179 **52-4-205. Purposes of closed meetings -- Certain issues prohibited in closed**
180 **meetings.**

- 181 (1) A closed meeting described under Section **52-4-204** may only be held for:
- 182 (a) except as provided in Subsection (3), discussion of the character, professional
- 183 competence, or physical or mental health of an individual;
- 184 (b) strategy sessions to discuss collective bargaining;
- 185 (c) strategy sessions to discuss pending or reasonably imminent litigation;
- 186 (d) strategy sessions to discuss the purchase, exchange, or lease of real property,
- 187 including any form of a water right or water shares, or to discuss a proposed development
- 188 agreement, project proposal, or financing proposal related to the development of land owned by
- 189 the state, if public discussion would:
 - 190 (i) disclose the appraisal or estimated value of the property under consideration; or
 - 191 (ii) prevent the public body from completing the transaction on the best possible terms;
 - 192 (e) strategy sessions to discuss the sale of real property, including any form of a water
 - 193 right or water shares, if:
 - 194 (i) public discussion of the transaction would:
 - 195 (A) disclose the appraisal or estimated value of the property under consideration; or
 - 196 (B) prevent the public body from completing the transaction on the best possible terms;
 - 197 (ii) the public body previously gave public notice that the property would be offered for

198 sale; and
199 (iii) the terms of the sale are publicly disclosed before the public body approves the
200 sale;
201 (f) discussion regarding deployment of security personnel, devices, or systems;
202 (g) investigative proceedings regarding allegations of criminal misconduct;
203 (h) as relates to the Independent Legislative Ethics Commission, conducting business
204 relating to the receipt or review of ethics complaints;
205 (i) as relates to an ethics committee of the Legislature, a purpose permitted under
206 Subsection [52-4-204\(1\)\(a\)\(iii\)\(C\)](#);
207 (j) as relates to the Independent Executive Branch Ethics Commission created in
208 Section [63A-14-202](#), conducting business relating to an ethics complaint;
209 (k) as relates to a county legislative body, discussing commercial information as
210 defined in Section [59-1-404](#);
211 (l) as relates to the Utah Higher Education [~~Assistance Authority~~] Savings Board of
212 Trustees and its appointed board of directors, discussing fiduciary or commercial information
213 [~~as defined in Section [53B-12-102](#)~~];
214 (m) deliberations, not including any information gathering activities, of a public body
215 acting in the capacity of:
216 (i) an evaluation committee under Title 63G, Chapter 6a, Utah Procurement Code,
217 during the process of evaluating responses to a solicitation, as defined in Section [63G-6a-103](#);
218 (ii) a protest officer, defined in Section [63G-6a-103](#), during the process of making a
219 decision on a protest under Title 63G, Chapter 6a, Part 16, Protests; or
220 (iii) a procurement appeals panel under Title 63G, Chapter 6a, Utah Procurement
221 Code, during the process of deciding an appeal under Title 63G, Chapter 6a, Part 17,
222 Procurement Appeals Board;
223 (n) the purpose of considering information that is designated as a trade secret, as
224 defined in Section [13-24-2](#), if the public body's consideration of the information is necessary to
225 properly conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code;

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

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

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

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

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

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

240 (q) as it relates to the Cannabis Production Establishment Licensing Advisory Board,
241 to review confidential information regarding violations and security requirements in relation to
242 the operation of cannabis production establishments; or

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

244 (2) The following meetings shall be closed:

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

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

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

251 (ii) review and discuss an individual case, as described in Subsection 36-33-103(2);

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

254 26-7-13(10);

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

259 (e) a meeting of the Compassionate Use Board established in Section 26-61a-105 for
260 the purpose of reviewing petitions for a medical cannabis card in accordance with Section
261 26-61a-105;

262 (f) a meeting of the Colorado River Authority of Utah if:

263 (i) the purpose of the meeting is to discuss an interstate claim to the use of the water in
264 the Colorado River system; and

265 (ii) failing to close the meeting would:

266 (A) reveal the contents of a record classified as protected under Subsection
267 63G-2-305(82);

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

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

273 (D) give an advantage to another state or to the federal government in negotiations
274 regarding the use of water in the Colorado River system;

275 (g) a meeting of the General Regulatory Sandbox Program Advisory Committee if:

276 (i) the purpose of the meeting is to discuss an application for participation in the
277 regulatory sandbox as defined in Section 63N-16-102; and

278 (ii) failing to close the meeting would reveal the contents of a record classified as
279 protected under Subsection 63G-2-305(83);

280 (h) a meeting of a project entity if:

281 (i) the purpose of the meeting is to conduct a strategy session to discuss market

282 conditions relevant to a business decision regarding the value of a project entity asset if the
283 terms of the business decision are publicly disclosed before the decision is finalized and a
284 public discussion would:

285 (A) disclose the appraisal or estimated value of the project entity asset under
286 consideration; or

287 (B) prevent the project entity from completing on the best possible terms a
288 contemplated transaction concerning the project entity asset;

289 (ii) the purpose of the meeting is to discuss a record, the disclosure of which could
290 cause commercial injury to, or confer a competitive advantage upon a potential or actual
291 competitor of, the project entity;

292 (iii) the purpose of the meeting is to discuss a business decision, the disclosure of
293 which could cause commercial injury to, or confer a competitive advantage upon a potential or
294 actual competitor of, the project entity; or

295 (iv) failing to close the meeting would prevent the project entity from getting the best
296 price on the market; and

297 (i) a meeting of the School Activity Eligibility Commission, described in Section
298 [53G-6-1003](#), if the commission is in effect in accordance with Section [53G-6-1002](#), to
299 consider, discuss, or determine, in accordance with Section [53G-6-1004](#), an individual student's
300 eligibility to participate in an interscholastic activity, as that term is defined in Section
301 [53G-6-1001](#), including the commission's determinative vote on the student's eligibility.

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

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

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

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

310 Temporary Absence in Elected Office.

311 Section 3. Section **53B-1-301** is amended to read:

312 **53B-1-301. Reports to and actions of the Higher Education Appropriations**
313 **Subcommittee.**

314 (1) In accordance with applicable provisions and Section [68-3-14](#), the following
315 recurring reports are due to the Higher Education Appropriations Subcommittee:

316 (a) the reports described in Sections [34A-2-202.5](#), [53B-30-206](#), and [59-9-102.5](#) by the
317 Rocky Mountain Center for Occupational and Environmental Health;

318 (b) the report described in Section [53B-7-101](#) by the board on recommended
319 appropriations for higher education institutions, including the report described in Section
320 [53B-8-104](#) by the board on the effects of offering nonresident partial tuition scholarships;

321 (c) the report described in Section [53B-7-704](#) by the Department of Workforce
322 Services and the Governor's Office of Economic Opportunity on targeted jobs;

323 (d) the reports described in Section [53B-7-705](#) by the board on performance;

324 (e) the report described in Section [53B-8-201](#) by the board on the Opportunity
325 Scholarship Program;

326 (f) the report described in Section [53B-8d-104](#) by the Division of Child and Family
327 Services on tuition waivers for wards of the state;

328 [~~(g)~~ the report described in Section [53B-12-107](#) by the Utah Higher Education
329 Assistance Authority;]

330 [~~(h)~~] (g) the report described in Section [53B-13a-103](#) by the board on the Utah Promise
331 Program;

332 [~~(i)~~] (h) the report described in Section [53B-17-201](#) by the University of Utah
333 regarding the Miners' Hospital for Disabled Miners;

334 [~~(j)~~] (i) the report described in Section [53B-26-202](#) by the Medical Education Council
335 on projected demand for nursing professionals;

336 [~~(k)~~] (j) the report described in Section [53B-35-202](#) regarding the Higher Education
337 and Corrections Council; and

338 ~~[(f)]~~ (k) the report described in Section 53E-10-308 by the State Board of Education
339 and board on student participation in the concurrent enrollment program.

340 (2) In accordance with applicable provisions and Section 68-3-14, the following
341 occasional reports are due to the Higher Education Appropriations Subcommittee:

342 (a) upon request, the information described in Section 53B-8a-111 submitted by the
343 Utah Educational Savings Plan;

344 (b) a proposal described in Section 53B-26-202 by an eligible program to respond to
345 projected demand for nursing professionals; and

346 (c) a report in 2023 from Utah Valley University and the Utah Fire Prevention Board
347 on the fire and rescue training program described in Section 53B-29-202.

348 (3) In accordance with applicable provisions, the Higher Education Appropriations
349 Subcommittee shall complete the following:

350 (a) as required by Section 53B-7-703, the review of performance funding described in
351 Section 53B-7-703;

352 (b) an appropriation recommendation described in Section 53B-26-202 to fund a
353 proposal responding to projected demand for nursing professionals; and

354 (c) review of the report described in Section 63B-10-301 by the University of Utah on
355 the status of a bond and bond payments specified in Section 63B-10-301.

356 Section 4. Section 53B-7-801 is amended to read:

357 **53B-7-801. Definitions.**

358 ~~[As used in this part:]~~

359 ~~[(1) "Authority" means the Utah Higher Education Assistance Authority.]~~

360 ~~[(2) "Endowment"]~~ As used in this part, "endowment" means the Higher Education
361 Student Success Endowment created in Section 53B-7-802.

362 Section 5. Section 53B-7-802 is amended to read:

363 **53B-7-802. Higher Education Student Success Endowment.**

364 (1) There is created the Higher Education Student Success Endowment.

365 (2) The endowment consists of:

366 (a) the proceeds from divestment of the ~~[authority's]~~ dissolved Utah Higher Education
367 Assistance Authority's loan portfolio ~~[in accordance with Section 53B-12-109]~~;

368 (b) appropriations made to the endowment by the Legislature, if any;

369 (c) income from the investment of the endowment; and

370 (d) other revenues received from other sources.

371 (3) The board shall account for the receipt and expenditures of endowment money in
372 accordance with the policies and guidance of the Division of Finance.

373 (4) (a) (i) The state treasurer shall invest the endowment money with the primary goal
374 of providing for stability, income, and growth of the principal.

375 (ii) The state treasurer may deduct any administrative costs incurred in managing
376 endowment assets from earnings before distributing the earnings.

377 (b) Nothing in this section requires a specific outcome in investing.

378 (c) The state treasurer may employ professional asset managers to assist in the
379 investment of assets of the endowment.

380 (d) The state treasurer may only provide compensation to asset managers from earnings
381 generated by the endowment's investments.

382 (e) The state treasurer shall invest and manage the endowment assets as a prudent
383 investor would, by:

384 (i) considering the purposes, terms, distribution requirements, and other circumstances
385 of the endowment; and

386 (ii) exercising reasonable care, skill, and caution in order to meet the standard of care
387 of a prudent investor.

388 (f) In determining whether or not the state treasurer has met the standard of care of a
389 prudent investor, the judge or finder of fact shall:

390 (i) consider the state treasurer's actions in light of the facts and circumstances existing
391 at the time of the investment decision or action, and not by hindsight; and

392 (ii) evaluate the state treasurer's investment and management decisions respecting
393 individual assets not in isolation, but in context of an endowment portfolio as a whole as a part

394 of an overall investment strategy that has risk and return objectives reasonably suited to the
395 endowment.

396 (5) (a) The endowment shall earn interest.

397 (b) The state treasurer shall deposit the interest or other revenue earned from
398 investment of the endowment into the endowment.

399 (6) The board:

400 (a) may expend money from the endowment for programs that:

401 (i) advance the system priorities as established in Subsection 53B-1-402(2)(a); and

402 (ii) support prospective students or current students enrolled at an institution, as
403 described in Section 53B-2-101; and

404 (b) may not expend money from the endowment for a capital expenditure, including
405 the construction or lease of a capital facility or operation and maintenance of a capital facility.

406 (7) The board shall ensure that:

407 (a) money deposited into the endowment is irrevocable and is expended only for

408 programs that advance the system priorities as established in Subsection 53B-1-402(2)(a); and

409 (b) creditors of the board of directors may not seize, attach, or otherwise obtain assets
410 of the endowment.

411 Section 6. Section 53B-7-804 is enacted to read:

412 **53B-7-804. State grants to the authority.**

413 To the extent otherwise allowed, a state entity may grant money or property to the
414 endowment.

415 Section 7. Section 53B-7-805 is enacted to read:

416 **53B-7-805. Gifts to the endowment.**

417 A person may make a contribution, gift, grant, bequest, or devise, or loans to the
418 endowment.

419 Section 8. Section 53B-8a-102.5 is amended to read:

420 **53B-8a-102.5. Definitions for part.**

421 As used in this part:

422 (1) "Administrative fund" means the money used to administer the Utah Educational
423 Savings Plan.

424 (2) "Board" means ~~[the board of directors of the Utah Educational Savings Plan, which~~
425 ~~is the Utah Board of Higher Education acting in the Utah Board of Higher Education's capacity~~
426 ~~as the Utah Higher Education Assistance Authority under Title 53B, Chapter 12, Higher~~
427 ~~Education Assistance Authority]~~ the Utah Education Savings Board of Trustees created in
428 Section 53B-8a-105.

429 (3) "Endowment fund" means the endowment fund established under Section
430 53B-8a-107, which is held as a separate fund within the Utah Educational Savings Plan.

431 (4) "Executive director" means the administrator appointed to administer and manage
432 the Utah Educational Savings Plan.

433 (5) "Federally insured depository institution" means an institution whose deposits and
434 accounts are to any extent insured by a federal deposit insurance agency, including the Federal
435 Deposit Insurance Corporation and the National Credit Union Administration.

436 (6) "Grantor trust" means a trust, the income of which is for the benefit of the grantor
437 under Section 677, Internal Revenue Code.

438 (7) "Higher education costs" means qualified higher education expenses as defined in
439 Section 529(e)(3), Internal Revenue Code.

440 (8) "Owner of the grantor trust" means one or more individuals who are treated as an
441 owner of a trust under Section 677, Internal Revenue Code, if that trust is a grantor trust.

442 (9) "Program fund" means the program fund created under Section 53B-8a-107, which
443 is held as a separate fund within the Utah Educational Savings Plan.

444 (10) "Qualified investment" means an amount invested in accordance with an account
445 agreement established under this part.

446 (11) "Tuition and fees" means the quarterly or semester charges imposed to attend an
447 institution of higher education and required as a condition of enrollment.

448 Section 9. Section 53B-8a-104 is amended to read:

449 **53B-8a-104. Office facilities, clerical, and administrative support for the Utah**

450 **Educational Savings Plan.**

451 (1) The [~~board~~] Utah Board of Higher Education shall provide to the plan, by
452 agreement, administrative [~~and clerical~~] support and office facilities and space.

453 (2) Reasonable charges or fees may be levied against the plan pursuant to the
454 agreement for the services provided by the [~~board~~] Utah Board of Higher Education.

455 Section 10. Section **53B-8a-105** is amended to read:

456 **53B-8a-105. Powers and duties of board.**

457 (1) There is created the Utah Education Savings Board of Trustees.

458 (2) The Utah Board of Higher Education shall:

459 (a) appoint the members of the board as follows:

460 (i) not more than three members from the Utah Board of Higher Education; and

461 (ii) at least four public members, each of whom possesses skills in one or more of the
462 following:

463 (A) investments;

464 (B) accounting;

465 (C) finance;

466 (D) banking;

467 (E) education;

468 (F) technology; or

469 (G) financial operations; and

470 (b) designate a member appointed under Subsection (2)(a) as chair.

471 (3) Each board member serves at the pleasure of the Utah Board of Higher Education.

472 ~~[(4)]~~ (4) The board has all powers necessary to carry out and effectuate the purposes,
473 objectives, and provisions of this chapter pertaining to the plan.

474 (5) The board shall act as a fiduciary of the plan with:

475 (a) a duty of care to act solely in the best interest of the plan's account owners and
476 beneficiaries;

477 (b) a duty of loyalty putting the plan's interest ahead of other interests; and

478 (c) a duty to invest with care, skill, prudence, and diligence.

479 ~~[(2)]~~ (6) The duties, responsibilities, funds, liabilities, and expenses of the board in
480 oversight and governance of the plan shall be maintained separate and apart from the ~~[board's]~~
481 Utah Board of Higher Education's other duties, responsibilities, funds, liabilities, and expenses.

482 ~~[(3)]~~ (7) The board shall ~~[make policies governing the]:~~

483 (a) make policies governing the administration of the plan; and

484 ~~[(b) appointment and duties of the plan's executive director.]~~

485 (b) amend policies related to board governance.

486 ~~[(4)]~~ (8) (a) The board may appoint advisory committees to aid the board in fulfilling
487 its duties and responsibilities.

488 (b) An advisory committee member may receive compensation and be reimbursed for
489 reasonable expenses incurred in the performance of the member's official duties as determined
490 by the board.

491 (9) The board may appoint a board of directors known as the Board of Directors of the
492 Utah Education Savings Plan to carry out the obligation of separation of functions required
493 under Subsection (6).

494 (10) If the board creates a board of directors under Subsection (9):

495 (a) the board of directors shall consist of at least five members; and

496 (b) no more than two-thirds of the members of the board of directors may
497 simultaneously serve as a member of the board.

498 Section 11. **Repealer.**

499 This bill repeals:

500 Section **53B-11-101, Establishment of Student Loan Fund.**

501 Section **53B-11-102, Use of Student Loan Fund.**

502 Section **53B-11-103, Student loan insurance program -- Board is successor to**
503 **authority of Coordinating Council -- Maintenance of insurance program.**

504 Section **53B-12-101, Utah Higher Education Assistance Authority designated --**
505 **Powers.**

506 Section **53B-12-102**, Separation of duties, responsibilities, funds, liabilities, and
507 expenses -- Appointment of board of directors -- No state or local debt -- Minors eligible
508 for loans.

509 Section **53B-12-103**, Gifts by persons, corporations, and associations -- Tax
510 deduction.

511 Section **53B-12-104**, Guarantee Fund -- Sources -- Use -- Valuation and restoration
512 of assets -- Other funds.

513 Section **53B-12-105**, Agreement with loan holders -- Terms unalterable.

514 Section **53B-12-106**, Guarantee agreements and expenses limited to funds of the
515 authority.

516 Section **53B-12-107**, Annual report -- Annual audit -- Reimbursement of state
517 auditor.

518 Section **53B-12-108**, State grants to the authority.

519 Section **53B-12-109**, Dissolution of authority -- Higher Education Student Success
520 Endowment.

521 Section 12. **Effective date.**

522 This bill takes effect on July 1, 2023.