

1 **INDEPENDENT ENTITIES FINANCIAL TRANSPARENCY**

2 **DISCLOSURE**

3 2014 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Deidre M. Henderson**

6 House Sponsor: Steve Eliason

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions related to making certain independent entities' financial
11 information available to the public on the Internet.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ requires the Utah State Retirement Office to publicly report certain financial
15 information on its website;
- 16 ▶ defines "independent entity";
- 17 ▶ requires an independent entity, except the Workers' Compensation Fund and the
18 Utah State Retirement Office, to report certain financial information on the Utah
19 Public Finance Website or via a link to its own website through the Utah Public
20 Finance Website;
- 21 ▶ provides specific reporting exclusions for certain independent entities; and
- 22 ▶ makes technical changes.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **63A-3-401**, as last amended by Laws of Utah 2012, Chapter 94

30 **63A-3-402**, as last amended by Laws of Utah 2011, Chapters 46 and 417

31 **63A-3-403**, as last amended by Laws of Utah 2013, Chapters 84 and 310

32 **63A-3-404**, as last amended by Laws of Utah 2009, Chapter 310

33 ENACTS:

34 **49-11-1101**, Utah Code Annotated 1953



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

37 Section 1. Section **49-11-1101** is enacted to read:

38 **Part 11. Public Financial Disclosure**

39 **49-11-1101. Public financial information disclosure on website -- Exclusions.**

40 (1) The office shall provide the following financial information for the public on its
41 website:

42 (a) administrative expense transactions from its general ledger accounting system; and

43 (b) aggregated employee compensation information by department.

44 (2) For purposes of this part, the office is not required to provide other information for
45 public access on its website, if the disclosure of the information would conflict with the
46 fiduciary obligations of the board, including:

47 (a) revenue transactions; and

48 (b) member and participant information.

49 Section 2. Section **63A-3-401** is amended to read:

50 **Part 4. Utah Public Finance Website**

51 **63A-3-401. Definitions.**

52 As used in this part:

53 (1) "Board" means the Utah Transparency Advisory Board created under Section
54 **63A-3-403**.

55 (2) "Division" means the Division of Finance of the Department of Administrative
56 Services.

57 (3) (a) "Independent entity," except as provided in Subsection (3)(b), is as defined in

58 Section 63E-1-102.

59 (b) "Independent entity" does not include:

60 (i) the Workers' Compensation Fund created in Section 31A-33-102; or

61 (ii) the Utah State Retirement Office created in Section 49-11-201.

62 [~~3~~] (4) "Participating local entity" means each of the following local entities, if the
63 entity meets the size or budget thresholds established by the [~~rules authorized~~] board under
64 Subsection [~~63A-3-404(2)(a)~~] 63A-3-403(3)(e):

65 (a) a county;

66 (b) a municipality;

67 (c) a local district under Title 17B, Limited Purpose Local Government Entities - Local
68 Districts;

69 (d) a special service district under Title 17D, Chapter 1, Special Service District Act;

70 (e) a school district;

71 (f) a charter school; and

72 (g) an interlocal entity as defined in Section 11-13-103.

73 [~~4~~] (5) "Participating state entity" means the state of Utah, including its executive,
74 legislative, and judicial branches, its departments, divisions, agencies, boards, commissions,
75 councils, committees, and institutions.

76 [~~5~~] (6) "Public financial information" means records that are required to be made
77 available on the Utah Public Finance Website [~~or~~], a participating local entity's website, or an
78 independent entity's website as required by this part, and as the term "public financial
79 information" is defined by rule under Section 63A-3-404.

80 Section 3. Section 63A-3-402 is amended to read:

81 **63A-3-402. Utah Public Finance Website -- Establishment and administration --**
82 **Records disclosure -- Exceptions.**

83 (1) There is created the Utah Public Finance Website to be administered by the
84 Division of Finance with the technical assistance of the Department of Technology Services.

85 (2) The Utah Public Finance Website shall:

- 86 (a) permit Utah taxpayers to:
- 87 (i) view, understand, and track the use of taxpayer dollars by making public financial
- 88 information available on the Internet for participating state [~~entities' and~~] entities, independent
- 89 entities, and participating local entities, using the Utah Public Finance Website; and
- 90 (ii) link to websites administered by participating local entities or independent entities
- 91 that do not use the Utah Public Finance Website for the purpose of providing participating
- 92 local entities' or independent entities' public financial information as required by this part and
- 93 by rule under Section [63A-3-404](#);
- 94 (b) allow a person who has Internet access to use the website without paying a fee;
- 95 (c) allow the public to search public financial information on the Utah Public Finance
- 96 Website using [~~those~~] criteria established by the board;
- 97 (d) provide access to financial reports, financial audits, budgets, or other financial
- 98 documents that are used to allocate, appropriate, spend, and account for [~~the~~] government
- 99 funds, as may be established by rule under Section [63A-3-404](#);
- 100 (e) have a unique and simplified website address;
- 101 (f) be directly accessible via a link from the main page of the official state website;
- 102 (g) include other links, features, or functionality that will assist the public in obtaining
- 103 and reviewing public financial information, as may be established by rule under Section
- 104 [63A-3-404](#); and
- 105 (h) include a link to school report cards published on the State Board of Education's
- 106 website pursuant to Section [53A-1-1112](#).
- 107 (3) The division shall:
- 108 (a) establish and maintain the website, including the provision of equipment, resources,
- 109 and personnel as [~~is~~] necessary;
- 110 (b) maintain an archive of all information posted to the website;
- 111 (c) coordinate and process the receipt and posting of public financial information from
- 112 participating state entities;
- 113 (d) coordinate and regulate the posting of public financial information by participating

114 local entities and independent entities; and

115 (e) provide staff support for the advisory committee.

116 (4) (a) A participating state entity and each independent entity shall permit the public
117 to view the [~~participating~~] entity's public financial information via the website, beginning with
118 information that is generated not later than the fiscal year that begins July 1, 2008, except that
119 public financial information for an:

120 (i) institution of higher education shall be provided beginning with information
121 generated for the fiscal year beginning July 1, 2009[-]; and

122 (ii) independent entity shall be provided beginning with information generated for the
123 entity's fiscal year beginning in 2014.

124 (b) [~~Not~~] No later than May 15, 2009, the website shall:

125 (i) be operational; and

126 (ii) permit public access to participating state entities' public financial information,
127 except as provided in [~~Subsection~~] Subsections (4)(c) and (d).

128 (c) An institution of higher education that is a participating state entity shall submit the
129 entity's public financial information at a time allowing for inclusion on the website no later
130 than May 15, 2010.

131 (d) No later than the first full quarter after July 1, 2014, an independent entity shall
132 submit the entity's public financial information for inclusion on the Utah Public Finance
133 Website or via a link to its own website on the Utah Public Finance Website.

134 (5) (a) The Utah Educational Savings Plan, created in Section [53B-8a-103](#), shall
135 provide the following financial information to the division for posting on the Utah Public
136 Finance Website:

137 (i) administrative fund expense transactions from its general ledger accounting system;
138 and

139 (ii) employee compensation information.

140 (b) The plan is not required to submit other financial information to the division,
141 including:

- 142 (i) revenue transactions;
- 143 (ii) account owner transactions; and
- 144 (iii) fiduciary or commercial information, as defined in Section [53B-12-102](#).

145 (6) (a) The following independent entities shall each provide administrative expense
146 transactions from its general ledger accounting system and employee compensation
147 information to the division for posting on the Utah Public Finance Website or via a link to a
148 website administered by the independent entity:

- 149 (i) the Utah Capital Investment Corporation, created in Section [63M-1-1207](#);
- 150 (ii) the Utah Housing Corporation, created in Section [35A-8-704](#); and
- 151 (iii) the School and Institutional Trust Lands Administration, created in Section
152 [53C-1-201](#).

153 (b) For purposes of this part, an independent entity described in Subsection (6)(a) is not
154 required to submit to the division, or provide a link to, other financial information, including:

- 155 (i) revenue transactions of a fund or account created in its enabling statute;
- 156 (ii) fiduciary or commercial information related to any subject if the disclosure of the
157 information:
 - 158 (A) would conflict with fiduciary obligations; or
 - 159 (B) is prohibited by insider trading provisions;
 - 160 (iii) information of a commercial nature, including information related to:
 - 161 (A) account owners, borrowers, and dependents;
 - 162 (B) demographic data;
 - 163 (C) contracts and related payments;
 - 164 (D) negotiations;
 - 165 (E) proposals or bids;
 - 166 (F) investments;
 - 167 (G) the investment and management of funds;
 - 168 (H) fees and charges;
 - 169 (I) plan and program design;

- 170 (J) investment options and underlying investments offered to account owners;
- 171 (K) marketing and outreach efforts;
- 172 (L) lending criteria;
- 173 (M) the structure and terms of bonding; and
- 174 (N) financial plans or strategies; and
- 175 (iv) information protected from public disclosure by federal law.

176 ~~[(6)]~~ (7) A person who negligently discloses a record that is classified as private,
 177 protected, or controlled by Title 63G, Chapter 2, Government Records Access and
 178 Management Act, is not criminally or civilly liable for an improper disclosure of the record if
 179 the record is disclosed solely as a result of the preparation or publication of the Utah Public
 180 Finance Website.

181 Section 4. Section **63A-3-403** is amended to read:

182 **63A-3-403. Utah Transparency Advisory Board -- Creation -- Membership --**
 183 **Duties -- Determining which records are public.**

184 (1) There is created within the department the Utah Transparency Advisory Board
 185 comprised of members knowledgeable about public finance or providing public access to
 186 public information.

187 (2) The board consists of:

- 188 (a) an individual appointed by the director of the Division of Finance;
- 189 (b) an individual appointed by the executive director of the Governor's Office of
 190 Management and Budget;
- 191 (c) an individual appointed by the governor on advice from the Legislative Fiscal
 192 Analyst;
- 193 (d) one member of the Senate, appointed by the governor on advice from the president
 194 of the Senate;
- 195 (e) one member of the House of Representatives, appointed by the governor on advice
 196 from the speaker of the House of Representatives;
- 197 (f) an individual appointed by the director of the Department of Technology Services;

198 (g) the director of the Division of Archives created in Section 63A-12-101 or the
199 director's designee;

200 (h) an individual who is a member of the State Records Committee created in Section
201 63G-2-501, appointed by the governor;

202 (i) an individual representing counties, appointed by the governor;

203 (j) an individual representing municipalities, appointed by the governor; and

204 (k) two individuals who are members of the public and who have knowledge,
205 expertise, or experience in matters relating to the board's duties under Subsection (10),
206 appointed by the board members identified in Subsections (2)(a) through (j).

207 (3) The board shall:

208 (a) advise the division on matters related to the implementation and administration of
209 this part;

210 (b) develop plans, make recommendations, and assist in implementing the provisions
211 of this part;

212 (c) determine what public financial information shall be provided by a participating
213 state [~~and local entities~~] entity, independent entity, and participating local entity, if the public
214 financial information:

215 (i) only includes records that:

216 (A) are classified as public under Title 63G, Chapter 2, Government Records Access
217 and Management Act, or, subject to any specific limitations and requirements regarding the
218 provision of financial information from the entity described in Section 63A-3-402, if an entity
219 is exempt from Title 63G, Chapter 2, Government Records Access and Management Act,
220 records that would normally be classified as public if the entity were not exempt from Title
221 63G, Chapter 2, Government Records Access and Management Act;

222 (B) are an accounting of money, funds, accounts, bonds, loans, expenditures, or
223 revenues, regardless of the source; and

224 (C) are owned, held, or administered by the participating state [~~or~~] entity, independent
225 entity, or participating local entity that is required to provide the record; and

226 (ii) is of the type or nature that should be accessible to the public via a website based
227 on considerations of:

228 (A) the cost effectiveness of providing the information;

229 (B) the value of providing the information to the public; and

230 (C) privacy and security considerations;

231 (d) evaluate the cost effectiveness of implementing specific information resources and
232 features on the website;

233 (e) establish size or budget thresholds to identify those local entities that qualify as
234 participating local entities as defined in this part, giving special consideration to the budget and
235 resource limitations of an entity with a current annual budget of less than \$10,000,000;

236 (f) require participating local entities to provide public financial information in
237 accordance with the requirements of this part, with a specified content, reporting frequency,
238 and form;

239 (g) require an independent entity's website or a participating local entity's website to be
240 accessible by link or other direct route from the Utah Public Finance Website if the
241 independent entity or participating local entity does not use the Utah Public Finance Website;
242 and

243 (h) determine the search methods and the search criteria that shall be made available to
244 the public as part of a website used by an independent entity or a participating local entity
245 under the requirements of this part, which criteria may include:

246 (i) fiscal year;

247 (ii) expenditure type;

248 (iii) name of the agency;

249 (iv) payee;

250 (v) date; and

251 (vi) amount.

252 (4) The board shall annually elect a chair and a vice chair from its members.

253 (5) (a) Each member shall serve a two-year term.

254 (b) When a vacancy occurs in the membership for any reason, the replacement shall be
255 appointed for the remainder of the unexpired term.

256 (6) To accomplish its duties, the board~~[(a) may meet as many as eight times during~~
257 ~~2013; and (b) shall, after 2013,]~~ shall meet as it determines necessary.

258 (7) Reasonable notice shall be given to each member of the board before any meeting.

259 (8) A majority of the board constitutes a quorum for the transaction of business.

260 (9) A member may not receive compensation or benefits for the member's service, but
261 may receive per diem and travel expenses in accordance with:

262 (a) Section 63A-3-106;

263 (b) Section 63A-3-107; and

264 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
265 63A-3-107.

266 (10) (a) As used in this Subsection (10):

267 (i) "Information website" means a single Internet website containing public information
268 or links to public information.

269 (ii) "Public information" means records of state ~~[or]~~ government, local government, or
270 an independent entity that are classified as public under Title 63G, Chapter 2, Government
271 Records Access and Management Act, or, subject to any specific limitations and requirements
272 regarding the provision of financial information from the entity described in Section
273 63A-3-402, if an entity is exempt from Title 63G, Chapter 2, Government Records Access and
274 Management Act, records that would normally be classified as public if the entity were not
275 exempt from Title 63G, Chapter 2, Government Records Access and Management Act.

276 (b) The board shall:

277 (i) study the establishment of an information website and develop recommendations for
278 its establishment;

279 (ii) develop recommendations about how to make public information more readily
280 available to the public through the information website; and

281 (iii) develop standards to make uniform the format and accessibility of public

282 information posted to the information website~~;~~ ~~and~~.

283 ~~[(iv) no later than November 30, 2013, report the board's recommendations and~~
284 ~~standards developed under Subsections (10)(b)(i) through (iii) to the executive director and the~~
285 ~~Legislative Management Committee.]~~

286 (c) In fulfilling its duties under Subsection (10)(b), the board shall be guided by
287 principles that encourage:

288 (i) (A) the establishment of a standardized format of public information that makes the
289 information more easily accessible by the public;

290 (B) the removal of restrictions on the reuse of public information;

291 (C) minimizing limitations on the disclosure of public information while appropriately
292 safeguarding sensitive information; and

293 (D) balancing factors in favor of excluding public information from an information
294 website against the public interest in having the information accessible on an information
295 website;

296 (ii) (A) permanent, lasting, open access to public information; and

297 (B) the publication of bulk public information;

298 (iii) the implementation of well-designed public information systems that ensure data
299 quality, create a public, comprehensive list or index of public information, and define a process
300 for continuous publication of and updates to public information;

301 (iv) the identification of public information not currently made available online and the
302 implementation of a process, including a timeline and benchmarks, for making that public
303 information available online; and

304 (v) accountability on the part of those who create, maintain, manage, or store public
305 information or post it to an information website.

306 (d) The department shall implement the board's recommendations, including the
307 establishment of an information website, to the extent that implementation:

308 (i) is approved by the Legislative Management Committee;

309 (ii) does not require further legislative appropriation; and

310 (iii) is within the department's existing statutory authority.

311 Section 5. Section **63A-3-404** is amended to read:

312 **63A-3-404. Rulemaking authority.**

313 (1) After consultation with the board, and in accordance with Title 63G, Chapter 3,
314 Utah Administrative Rulemaking Act, the Division of Finance shall make rules to:

315 (a) require participating state entities to provide public financial information for
316 inclusion on the Utah Public Finance Website;

317 (b) define, either uniformly for all participating state entities, or on an entity by entity
318 basis, the term "public financial information" using the standards provided in Subsection
319 [63A-3-403](#)~~(2)~~(3)(c); and

320 (c) establish procedures for obtaining, submitting, reporting, storing, and providing
321 public financial information on the Utah Public Finance Website, which may include a
322 specified reporting frequency and form.

323 (2) After consultation with the board, and in accordance with Title 63G, Chapter 3,
324 Utah Administrative Rulemaking Act, the Division of Finance may make rules to:

325 (a) require a participating state or local entity to list certain expenditures made by a
326 person under a contract with the entity; and

327 (b) if a list is required under Subsection (2)(a), require the following information to be
328 included:

329 (i) the name of the participating state or local entity making the expenditure;

330 (ii) the name of the person receiving the expenditure;

331 (iii) the date of the expenditure;

332 (iv) the amount of the expenditure;

333 (v) the purpose of the expenditure;

334 (vi) the name of each party to the contract;

335 (vii) an electronic copy of the contract; or

336 (viii) any other criteria designated by rule.