

**PUBLIC MENTAL HEALTH AND SUBSTANCE  
ABUSE SYSTEM REFORM**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Nora B. Stephens**

AN ACT RELATING TO THE PUBLIC MENTAL HEALTH AND SUBSTANCE ABUSE SYSTEMS; INCREASING ACCOUNTABILITY, RESPONSIBILITY, AND LIABILITY OF COUNTY GOVERNING BODIES WITH REGARD TO PUBLIC FUNDS; DEFINING PUBLIC FUNDS; PROVIDING CONTRACT AND AUDIT REQUIREMENTS; INCREASING AUTHORITY AND RESPONSIBILITY OF THE DIVISIONS OF MENTAL HEALTH AND SUBSTANCE ABUSE OVER SPECIFIED FEDERAL AND STATE FUNDS ALLOCATED FOR LOCAL MENTAL HEALTH AND SUBSTANCE ABUSE PROGRAMS AND SERVICES; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**17A-1-403**, as last amended by Chapter 30, Laws of Utah 1992

**17A-3-602**, as enacted by Chapter 181, Laws of Utah 1990

**17A-3-701**, as last amended by Chapter 30, Laws of Utah 1992

**62A-1-111**, as last amended by Chapters 34 and 254, Laws of Utah 1998

**62A-8-101**, as last amended by Chapter 227, Laws of Utah 1993

**62A-8-103**, as last amended by Chapter 68, Laws of Utah 1997

**62A-8-104**, as last amended by Chapter 181, Laws of Utah 1990

**62A-8-109**, as enacted by Chapter 1, Laws of Utah 1988

**62A-8-112**, as enacted by Chapter 181, Laws of Utah 1990

**62A-12-101**, as last amended by Chapter 227, Laws of Utah 1993

**62A-12-102**, as last amended by Chapter 181, Laws of Utah 1990

**62A-12-102.5**, as renumbered and amended by Chapter 181, Laws of Utah 1990

**62A-12-105**, as last amended by Chapter 30, Laws of Utah 1992

**62A-12-289**, as last amended by Chapter 13, Laws of Utah 1998

**67-3-1**, as last amended by Chapter 169, Laws of Utah 1997

**76-8-401**, as last amended by Chapter 232, Laws of Utah 1995

**76-8-402**, as last amended by Chapter 232, Laws of Utah 1995

**76-8-404**, as last amended by Chapter 232, Laws of Utah 1995

ENACTS:

**17A-3-603.5**, Utah Code Annotated 1953

**17A-3-703**, Utah Code Annotated 1953

**62A-8-110.1**, Utah Code Annotated 1953

**62A-12-289.1**, Utah Code Annotated 1953

REPEALS AND REENACTS:

**62A-8-110.5**, as enacted by Chapter 181, Laws of Utah 1990

REPEALS:

**17A-3-612**, as renumbered and amended by Chapter 186, Laws of Utah 1990

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

Section 1. Section **17A-1-403** is amended to read:

**17A-1-403. Applicability to special districts -- Exceptions.**

This part applies to all special districts under Subsection 17A-1-404(19) except the following districts which are specifically excluded from this part:

(1) redevelopment agencies created under Chapter 2, Part ~~[11 or]~~ 12;

(2) public transit districts created under Chapter 2, Part 10;

(3) health departments created under Title 26A, Chapter 1; and

~~[(4) mental health districts created under Chapter 3, Part 6; and]~~

~~[(5)]~~ (4) entities created under Title 11, Chapter 13, Interlocal Cooperation Act, unless the entity is also a mental health district created under Chapter 3, Part 6.

Section 2. Section **17A-3-602** is amended to read:

**17A-3-602. Local mental health authorities -- Responsibilities.**

(1) All county governing bodies in this state are local mental health authorities. Within legislative appropriations and county matching funds required by this section, under the policy

direction of the [board] state Board of Mental Health and the administrative direction of the [division] Division of Mental Health within the Department of Human Services, local mental health authorities shall provide mental health services to persons within their respective counties. Two or more county governing bodies may join to provide mental health prevention and treatment services.

(2) The governing bodies may establish acceptable ways of apportioning the cost of mental health services. Any agreement for joint mental health services may designate the treasurer of one of the participating counties as the custodian of moneys available for those joint services, and that the designated treasurer, or other disbursing officer, may make payments from those moneys for such purposes upon audit of the appropriate auditing officer or officers representing the participating counties. The agreement may provide for:

(a) joint operation of services and facilities or for operation of services and facilities under contract by one participating local mental health authority for other participating local mental health authorities; and

(b) allocation of appointments of members of the mental health advisory council between or among participating counties.

(3) (a) All county governing bodies, as local mental health authorities, are accountable to the Department of Human Services, the Department of Health, and the state with regard to the use of state and federal funds received from those departments for mental health services, regardless of whether the services are provided by a private contract provider.

(b) A local mental health authority shall comply, and require compliance by its contract provider, with all directives issued by the Department of Human Services and the Department of Health regarding the use and expenditure of state and federal funds received from those departments for the purpose of providing mental health programs and services. The Department of Human Services and Department of Health shall ensure that those directives are not duplicative or conflicting, and shall consult and coordinate with local mental health authorities with regard to programs and services.

[~~(3)~~] (4) Local mental health authorities shall:

(a) review and evaluate mental health needs and services;

(b) annually prepare and submit to the division a plan for mental health funding and service delivery. The plan shall include[;] services for adults, youth, and children, including, but [is] not limited to, the following:

(i) inpatient care and services;

(ii) residential care and services;

~~[(iii) day treatment and psychosocial rehabilitation;]~~

~~[(iv)]~~ (iii) outpatient care and services;

~~[(v)]~~ (iv) 24-hour crisis care and services;

~~[(vi) outreach care and services;]~~

~~[(vii) follow-up care and services;]~~

~~[(viii) screening for referral services;]~~

(v) psychotropic medication management;

(vi) psychosocial rehabilitation including vocational training and skills development;

(vii) case management;

(viii) community supports including in-home services, housing, family support services, and respite services; and

(ix) consultation and education services, including but not limited to, case consultation, collaboration with other service agencies, public education, and public information; [and]

~~[(x) case management;]~~

(c) establish and maintain, either directly or by contract, programs licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities;

(d) appoint directly or by contract a full-time or part-time director for mental health programs and prescribe his duties;

(e) provide input and comment on new and revised policies established by the [board] state Board of Mental Health;

(f) establish [or] and require [contractors] contract providers to establish administrative, clinical, personnel, financial, and management policies regarding mental health services and facilities, in accordance with the policies of the [board] state Board of Mental Health, the Division of Mental

Health, and state and federal law;

(g) establish mechanisms ~~[to provide]~~ allowing for direct citizen input; ~~[and]~~

(h) annually contract with the Division of Mental Health to provide mental health programs and services in accordance with the provisions of Title 62A, Chapter 12, Mental Health;

~~[(h)]~~ (i) comply with all applicable state and federal statutes, policies, audit requirements, contract requirements, and any directives resulting from those audits~~;~~ and contract requirements;

~~[(i)]~~ (j) provide funding equal to at least 20% of the state funds that it receives to fund services described in the plan; and

~~[(j)]~~ (k) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal Cooperation Act, [and with the requirements and procedures of] Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities, and Title 17A, Chapter 1, Part 4, Uniform Fiscal Procedures for Special Districts Act.

~~[(4)]~~ (5) Before disbursing any public funds, local mental health authorities shall require that all entities that receive any public funds from a local mental health authority agree in writing that:

(a) the division may examine the entity's financial records; ~~[and]~~

(b) the county auditor may examine and audit the entity's financial records ~~[if requested to do so by the local mental health authority.]; and~~

(c) the entity will comply with the provisions of Subsection (3)(b).

~~[(5)]~~ (6) Local mental health authorities may receive property, grants, gifts, supplies, materials, contributions, and any benefit derived therefrom, for mental health services. If those gifts are conditioned upon their use for a specified service or program, they shall be so used.

(7) (a) For purposes of this section "public funds" means the same as that term is defined in Section 17A-3-603.5.

(b) Nothing in this section limits or prohibits an organization exempt under Section 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any financial arrangement that is otherwise lawful for that organization.

Section 3. Section **17A-3-603.5** is enacted to read:

**17A-3-603.5. Definition of "public funds" -- Responsibility for oversight of public**

**funds -- Mental health programs and services.**

(1) As used in this section, "public funds" means federal monies received from the Department of Human Services or the Department of Health, and state monies appropriated by the Legislature to the Department of Human Services, the Department of Health, a county governing body, or local mental health authority for the purposes of providing mental health programs or services. "Public funds" includes those federal and state monies that have been transferred by a local mental health authority to a private provider under an annual or otherwise ongoing contract to provide comprehensive mental health programs or services for the local mental health authority. Those monies maintain the nature of "public funds" while in the possession of the private entity that has an annual or otherwise ongoing contract with a local mental health authority to provide comprehensive mental health programs or services for the local mental health authority.

(2) Each local mental health authority is responsible for oversight of all public funds received by it, to determine that those public funds are utilized in accordance with federal and state law, the rules and policies of the Department of Human Services and the Department of Health, and the provisions of any contract between the local mental health authority and the Department of Human Services, the Department of Health, or a private provider. That oversight includes requiring that neither the contract provider, as described in Subsection (1), nor any of its employees:

(a) violate any applicable federal or state criminal law;

(b) knowingly violate, on more than one occasion, any applicable rule or policy of the Department of Human Services or Department of Health, or any provision of contract between the local mental health authority and the Department of Human Services, the Department of Health, or the private provider;

(c) knowingly keep any false account or make any false entry or erasure in any account of or relating to the public funds;

(d) fraudulently alter, falsify, conceal, destroy, or obliterate any account of or relating to public funds;

(e) fail to ensure competent oversight for lawful disbursement of public funds;

(f) appropriate public funds for an unlawful use or for a use that is not in compliance with

contract provisions; or

(g) knowingly or intentionally use public funds unlawfully or in violation of a governmental contract provision, or in violation of state policy.

(3) Nothing in this section limits or prohibits an organization exempt under Section 501(c)(3),

Internal Revenue Code, from using public funds for any business purpose or in any financial arrangement that is otherwise lawful for that organization.

(4) A local mental health authority that knew or reasonably should have known of any of the circumstances described in Subsection (2), and that fails or refuses to take timely corrective action in good faith shall, in addition to any other penalties provided by law, be required to make full and complete repayment to the state of all public funds improperly used or expended.

(5) Any public funds required to be repaid to the state by a local mental health authority pursuant to Subsection (4), based upon the actions or failure of the contract provider, may be recovered by the local mental health authority from its contract provider, in addition to the local mental health authority's costs and attorney's fees.

Section 4. Section **17A-3-701** is amended to read:

**17A-3-701. Local substance abuse authorities -- Responsibilities.**

(1) All county governing bodies in this state are local substance abuse authorities. Within legislative appropriations and county matching funds required by this section, and under the policy direction of the [board] state Board of Substance Abuse and the administrative direction of the [division] Division of Substance Abuse within the Department of Human Services, local substance abuse authorities shall provide substance abuse services to residents of their respective counties. Two or more county governing bodies may join to provide substance abuse prevention and treatment services.

(2) The governing bodies may establish acceptable ways of apportioning the cost of substance abuse services. Any agreement for joint substance abuse services may designate the treasurer of one of the participating counties as the custodian of moneys available for those joint services, and that the designated treasurer, or other disbursing officer, may make payments from those moneys for such purposes upon audit of the appropriate auditing officer or officers representing the participating

counties. The agreement may provide for joint operation of services and facilities or for operation of services and facilities under contract by one participating local substance abuse authority for other participating local substance abuse authorities.

(3) (a) All county governing bodies, as local substance abuse authorities, are accountable to the Department of Human Services, the Department of Health, and the state with regard to the use of state and federal funds received from those departments for substance abuse services, regardless of whether the services are provided by a private contract provider.

(b) A local substance abuse authority shall comply, and require compliance by its contract provider, with all directives issued by the Department of Human Services and the Department of Health regarding the use and expenditure of state and federal funds received from those departments for the purpose of providing substance abuse programs and services. The Department of Human Services and Department of Health shall ensure that those directives are not duplicative or conflicting, and shall consult and coordinate with local substance abuse authorities with regard to programs and services.

~~[(3)]~~ (4) Local substance abuse authorities shall:

- (a) review and evaluate substance abuse prevention and treatment needs and services;
- (b) annually prepare and submit a plan to the division for funding and service delivery; the plan shall include, but is not limited to, primary prevention, targeted prevention, early intervention, and treatment services;
- (c) establish and maintain, either directly or by contract, programs licensed under Title 62A, Chapter 2;
- (d) appoint directly or by contract, a full or part time director for substance abuse programs, and prescribe his duties;
- (e) provide input and comment on new and revised policies established by the ~~[board]~~ state Board of Substance Abuse;
- (f) establish ~~[or]~~ and require ~~[contractors]~~ contract providers to establish administrative, clinical, personnel, financial, and management policies regarding substance abuse services and facilities, in accordance with the policies of the ~~[board]~~ state Board of Substance Abuse, and state

and federal law;

(g) establish mechanisms ~~[to provide]~~ allowing for direct citizen input;

(h) annually contract with the Division of Substance Abuse to provide substance abuse programs and services in accordance with the provisions of Title 62A, Chapter 8, Substance Abuse;

~~[(h)]~~ (i) comply with all applicable state and federal statutes, policies, audit requirements, contract requirements, and any directives resulting from those audits and contract requirements;

~~[(i)]~~ (j) promote or establish programs for the prevention of substance abuse within the community setting through community-based prevention programs;

~~[(j)]~~ (k) provide funding equal to at least 20% of the state funds that it receives to fund services described in the plan; and

~~[(k)]~~ (l) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal Cooperation Act, ~~[and with the requirements and procedures of]~~ Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities, and Title 17A, Chapter 1, Part 4, Uniform Fiscal Procedures for Special Districts Act.

~~[(4)]~~ (5) Before disbursing any public funds, local substance abuse authorities shall require that all entities that receive any public funds from a local substance abuse authority agree in writing that:

(a) the division may examine the entity's financial records; ~~[and]~~

(b) the county auditor may examine and audit the entity's financial records ~~[if requested to do so by the local substance abuse authority.];~~ and

(c) the entity will comply with the provisions of Subsection (3)(b).

~~[(5)]~~ (6) Local substance abuse authorities may receive property, grants, gifts, supplies, materials, contributions, and any benefit derived therefrom, for substance abuse services. If those gifts are conditioned upon their use for a specified service or program, they shall be so used.

(7) (a) For purposes of this section "public funds" means the same as that term is defined in Section 17A-3-703.

(b) Nothing in this section limits or prohibits an organization exempt under Section 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any financial

arrangement that is otherwise lawful for that organization.

Section 5. Section **17A-3-703** is enacted to read:

**17A-3-703. Definition of "public funds" -- Responsibility for oversight of public funds -- Substance abuse programs and services.**

(1) As used in this section, "public funds" means federal monies received from the Department of Human Services or the Department of Health, and state monies appropriated by the Legislature to the Department of Human Services, the Department of Health, a county governing body, or local substance abuse authority for the purposes of providing substance abuse programs or services. "Public funds" includes those federal and state monies that have been transferred by a local substance abuse authority to a private provider under an annual or otherwise ongoing contract to provide comprehensive substance abuse programs or services for the local substance abuse authority. Those monies maintain the nature of "public funds" while in the possession of the private entity that has an annual or otherwise ongoing contract with a local substance abuse authority to provide comprehensive substance abuse programs or services for the local substance abuse authority.

(2) Each local substance abuse authority is responsible for oversight of all public funds received by it, to determine that those public funds are utilized in accordance with federal and state law, the rules and policies of the Department of Human Services and the Department of Health, and the provisions of any contract between the local substance abuse authority and the Department of Human Services, the Department of Health, or a private provider. That oversight includes requiring that neither the contract provider, as described in Subsection (1), nor any of its employees:

(a) violate any applicable federal or state criminal law;

(b) knowingly violate, on more than one occasion, any applicable rule or policy of the Department of Human Services or Department of Health, or any provision of contract between the local substance abuse authority and the Department of Human Services, the Department of Health, or the private provider;

(c) knowingly keep any false account or make any false entry or erasure in any account of or relating to the public funds;

(d) fraudulently alter, falsify, conceal, destroy, or obliterate any account of or relating to

public funds;

(e) fail to ensure competent oversight for lawful disbursement of public funds;

(f) appropriate public funds for an unlawful use or for a use that is not in compliance with contract provisions; or

(g) knowingly or intentionally use public funds unlawfully or in violation of a governmental contract provision, or in violation of state policy.

(3) Nothing in this section limits or prohibits an organization exempt under Section 501(c)(3),

Internal Revenue Code, from using public funds for any business purpose or in any financial arrangement that is otherwise lawful for that organization.

(4) A local substance abuse authority that knew or reasonably should have known of any of the circumstances described in Subsection (2), and that fails or refuses to take timely corrective action in good faith shall, in addition to any other penalties provided by law, be required to make full and complete repayment to the state of all public funds improperly used or expended.

(5) Any public funds required to be repaid to the state by a local substance abuse authority pursuant to Subsection (4), based upon the actions or failure of the contract provider, may be recovered by the local substance abuse authority from its contract provider, in addition to the local substance abuse authority's costs and attorney's fees.

Section 6. Section **62A-1-111** is amended to read:

**62A-1-111. Department authority.**

The department has authority, in addition to all other authority and responsibility granted to it by law, to:

(1) adopt rules, not inconsistent with law, as the department may consider necessary or desirable for providing social services to the people of this state;

(2) establish and manage client trust accounts in the department's institutions and community programs, at the request of the client or his legal guardian or representative, or in accordance with federal law;

(3) purchase, as authorized or required by law, services that the department is responsible to provide for legally eligible persons;

- (4) conduct adjudicative proceedings for clients and providers in accordance with the procedures of Title 63, Chapter 46b, Administrative Procedures Act;
- (5) establish eligibility standards for its programs, not inconsistent with state or federal law or regulations;
- (6) take necessary steps, including legal action, to recover money or the monetary value of services provided to a recipient who was not eligible;
- (7) set and collect fees for its services;
- (8) license agencies, facilities, and programs, except as otherwise allowed, prohibited, or limited by law;
- (9) acquire, manage, and dispose of any real or personal property needed or owned by the department, not inconsistent with state law;
- (10) receive gifts, grants, devises, and donations; gifts, grants, devises, donations, or the proceeds thereof, may be credited to the program designated by the donor, and may be used for the purposes requested by the donor, as long as the request conforms to state and federal policy; all donated funds shall be considered private, nonlapsing funds and may be invested under guidelines established by the state treasurer;
- (11) accept and employ volunteer labor or services; the department is authorized to reimburse volunteers for necessary expenses, when the department considers that reimbursement to be appropriate;
- (12) carry out the responsibility assigned in the Workforce Services Plan by the State Council on Workforce Services;
- (13) carry out the responsibility assigned by Section 9-4-802 with respect to coordination of services for the homeless;
- (14) carry out the responsibility assigned by Section 62A-5a-105 with respect to coordination of services for handicapped students;
- (15) provide training and educational opportunities for its staff;
- (16) collect child support payments and any other monies due to the department;
- ~~[(17) examine and audit the expenditures of any public funds provided to local substance~~

~~abuse authorities, local mental health authorities, local area agencies established under Chapter 3, and any agency or organization that contracts with or receives funds from those authorities or agencies. Those local authorities, area agencies, and any person or entity that contracts with or receives funds from those authorities or area agencies, shall provide the department with any information it deems necessary to complete its audit;]~~

~~[(18)]~~ (17) apply the provisions of Title 78, Chapter 45, Uniform Civil Liability for Support Act, to parents whose child lives out of the home in a department licensed or certified setting;

~~[(19)]~~ (18) establish policy and procedures in cases where the department is given custody of a minor by the juvenile court pursuant to Section 78-3a-118; any policy and procedures shall include:

- (a) designation of interagency teams for each juvenile court district in the state;
- (b) delineation of assessment criteria and procedures;
- (c) minimum requirements, and timeframes, for the development and implementation of a collaborative service plan for each minor placed in department custody; and
- (d) provisions for submittal of the plan and periodic progress reports to the court; ~~[and]~~

~~[(20)]~~ (19) carry out the responsibilities assigned to it by statute~~[-]~~; and

(20) examine and audit the expenditures of any public funds provided to local substance abuse authorities, local mental health authorities, local area agencies on aging, and any person, agency, or organization that contracts with or receives funds from those authorities or agencies. Those local authorities, area agencies, and any person or entity that contracts with or receives funds from those authorities or area agencies, shall provide the department with any information the department considers necessary. The department is further authorized to issue directives resulting from any examination or audit to local authorities, area agencies, and persons or entities that contract with or receive funds from those authorities with regard to any public funds. If the department determines that it is necessary to withhold funds from a local mental health authority or local substance abuse authority based on failure to comply with state or federal law, policy, or contract provisions, it may take steps necessary to ensure continuity of services. For purposes of this Subsection (20) "public funds" means the same as that term is defined in Sections 62A-8-101 and

62A-12-101.

Section 7. Section **62A-8-101** is amended to read:

**62A-8-101. Definitions.**

As used in this chapter:

(1) "Board" means the Board of Substance Abuse established in accordance with Section 62A-1-105.

(2) "Director" means the director of the Division of Substance Abuse.

(3) "Division" means the Division of Substance Abuse established in Section 62A-8-103.

(4) "Local substance abuse authority" means a county legislative body.

(5) (a) "Public funds" means federal monies received from the Department of Human Services or the Department of Health, and state monies appropriated by the Legislature to the Department of Human Services, the Department of Health, a county governing body, or local substance abuse authority for the purposes of providing substance abuse programs or services. "Public funds" includes

those federal and state monies that have been transferred by a local substance abuse authority to a private provider under an annual or otherwise ongoing contract to provide comprehensive substance abuse programs or services for the local substance abuse authority. Those monies maintain the nature of "public funds" while in the possession of the private entity that has an annual or otherwise ongoing contract with a local substance abuse authority to provide comprehensive substance abuse programs or services for the local substance abuse authority.

(b) This definition of "public funds" does not limit or prohibit an organization exempt under Section 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any financial arrangement that is otherwise lawful for that organization.

Section 8. Section **62A-8-103** is amended to read:

**62A-8-103. Division -- Creation -- Responsibilities.**

(1) There is created the Division of Substance Abuse within the department, under the administration and general supervision of the executive director, and, with regard to its programs, under the policy direction of the board. The division is the substance abuse authority for this state.

(2) The division shall:

- (a) educate the general public regarding the nature and consequences of substance abuse by promoting school and community-based prevention programs;
- (b) render support and assistance to public schools through approved school-based substance abuse education programs aimed at prevention of substance abuse;
- (c) promote or establish programs for the prevention of substance abuse within the community setting through community-based prevention programs;
- (d) promote or establish cooperative relationships with courts, hospitals, clinics, medical and social agencies, public health authorities, law enforcement agencies, education and research organizations, and other related groups;
- (e) provide consultation and other assistance to public and private agencies and groups;
- (f) cooperate and assist other organizations and private treatment centers for substance abusers, by providing them with essential materials for furthering programs of prevention and rehabilitation of actual and potential substance abusers;
- (g) promote or conduct research on substance abuse issues, and submit to the governor and the Legislature recommendations for changes in policy and legislation;
- (h) receive [~~and disburse state and federal~~], distribute, and provide direction over public funds for substance abuse services;
- (i) consult and coordinate with local substance abuse authorities regarding substance abuse programs and services;
- ~~(i)~~ (j) promote or establish programs for education and certification of instructors to educate persons convicted of driving under the influence of alcohol or drugs or driving with any measurable controlled substance in the body;
- ~~(j)~~ (k) monitor and evaluate programs provided by local substance abuse authorities~~[, and]~~;
- (l) examine expenditures of any local, state, and federal funds;
- (m) monitor the expenditure of public funds by:
  - (i) local substance abuse authorities; and
  - (ii) in counties where they exist, the private contract provider that has an annual or otherwise ongoing contract to provide comprehensive substance abuse programs or services for the local

substance abuse authority;

~~[(k)]~~ (n) contract with local substance abuse authorities to provide a comprehensive continuum of services in accordance with board and division policy, contract provisions, and the local plan;

~~[(H)]~~ (o) contract with private and public entities for special statewide or nonclinical services according to board and division policy;

~~[(m)]~~ (p) review and approve ~~[plans submitted by]~~ each local substance abuse ~~[authorities]~~ authority's plan in order to assure:

(i) a statewide comprehensive continuum of substance abuse services; and

(ii) appropriate expenditure of public funds;

(q) review and make recommendations regarding each local substance abuse authority's contract with its provider of substance abuse programs and services to assure compliance with state and federal law and policy;

~~[(n)]~~ (r) monitor and assure compliance with board and division policy and contract requirements; and

~~[(o)]~~ (s) withhold funds from local substance abuse authorities and public and private providers for contract noncompliance, failure to comply with division directives regarding the use of public funds, or for misuse of public funds or monies.

(3) (a) The division may refuse to contract with and may pursue its legal remedies against any local substance abuse authority that fails, or has failed, to expend public funds in accordance with state law, policy, contract provisions, or directives issued in accordance with state law.

(b) The division may withhold funds from a local substance abuse authority if the authority's contract with its provider of substance abuse services fails to comply with state and federal law or policy.

(4) Before reissuing or renewing a contract with any local substance abuse authority, the division shall review and determine whether the local substance abuse authority is complying with its oversight and management responsibilities described in Sections 17A-3-701 and 17A-3-703. Nothing in this Subsection (4) may be used as a defense to the responsibility and liability described in Section

17A-3-703.

~~[(3)]~~ (5) In carrying out its duties and responsibilities, the division may not duplicate treatment or educational facilities that exist in other divisions or departments of the state, but shall work in conjunction with those divisions and departments in rendering the treatment or educational services that those divisions and departments are competent and able to provide.

~~[(4)]~~ (6) (a) The division may accept in the name of and on behalf of the state donations, gifts, devises, or bequests of real or personal property or services to be used as specified by the donor.

(b) Those donations, gifts, devises, or bequests shall be used by the division in performing its powers and duties. Any money so obtained shall be considered private nonlapsing funds and shall be deposited into an interest-bearing expendable trust fund to be used by the division for substance abuse services. The state treasurer may invest the fund and all interest shall remain with the fund.

(7) The division shall annually review with each local substance abuse authority the authority's statutory and contract responsibilities regarding:

(a) the use of public funds;

(b) oversight responsibilities regarding public funds; and

(c) governance of substance abuse programs and services.

Section 9. Section **62A-8-104** is amended to read:

**62A-8-104. Authority to assess fees.**

(1) The division may, with the approval of the Legislature, the executive director, and the board, establish fee schedules and assess fees for services rendered by the division.

(2) Fees shall be charged for substance abuse treatment services, but services may not be refused to any person because of his ~~[ability or]~~ inability to pay.

Section 10. Section **62A-8-109** is amended to read:

**62A-8-109. Formula for allocation of funds to local substance abuse authorities.**

(1) The board shall establish<sub>2</sub> by rule<sub>2</sub> a formula for allocating funds to local substance abuse authorities through contracts, to provide substance abuse prevention and treatment services in accordance with the provisions of this chapter and of Title 17A, Chapter 3, Part 7, Local Substance

Abuse Authorities. That formula shall provide for allocation of funds based on need. Determination of need shall be based on population unless the board establishes, by valid and accepted data, that other defined factors are relevant and reliable indicators of need. The formula shall include a differential to compensate for additional costs of providing services in rural areas.

(2) The formula established under Subsection (1) [~~shall be in effect on or before July 1, 1990, and~~] applies to all state and federal funds appropriated by the Legislature to the division for local substance abuse authorities, but does not apply to:

- (a) funds that local substance abuse authorities receive from sources other than the division;
- (b) funds that local substance abuse authorities receive from the division to operate a specific program within its jurisdiction which is available to all residents of the state;
- (c) funds that local substance abuse authorities receive from the division to meet a need that exists only within that local area; and
- (d) funds that local substance abuse authorities receive from the division for research projects.

(3) Contracts with local substance abuse authorities shall provide that the division may withhold funds otherwise allocated pursuant to this section to cover the costs of audits, attorneys' fees, and other expenditures associated with reviewing the expenditure of public funds by a local substance abuse authority or its contract provider, if there has been an audit finding or judicial determination that public funds have been misused by the local substance abuse authority or its contract provider.

Section 11. Section **62A-8-110.1** is enacted to read:

**62A-8-110.1. Responsibilities of the Division of Substance Abuse.**

(1) It is the responsibility of the division to assure that the requirements of this part are met and applied uniformly by local substance abuse authorities across the state.

(2) Since it is the division's responsibility to contract with, review, approve, and oversee local substance abuse authority plans, and to withhold funds from local substance abuse authorities and public and private providers for contract noncompliance or misuse of public funds, the division shall:

- (a) require each local substance abuse authority to submit its plan to the division by May 1

of each year:

(b) conduct an annual program audit and review of each local substance abuse authority in the state, and its contract provider; and

(c) provide a written report to the Health and Human Services Interim Committee on July 1, 1999, and each year thereafter, and provide an oral report to that committee, as requested. That report shall provide information regarding:

(i) the annual audit and review;

(ii) the financial expenditures of each local substance abuse authority and its contract provider;

(iii) the status of each local authority's and its contract provider's compliance with its plan, state statutes, and with the provisions of the contract awarded; and

(iv) whether audit guidelines established pursuant to Section 62A-8-110.5 and Subsection 67-3-1(2)(o) provide the division with sufficient criteria and assurances of appropriate expenditures of public funds.

(3) The annual audit and review described in Subsection (2)(b) shall, in addition to items determined by the division to be necessary and appropriate, include a review and determination regarding whether public funds allocated to local substance abuse authorities are consistent with services rendered and outcomes reported by it or its contract provider, and whether each local substance abuse authority is exercising sufficient oversight and control over public funds allocated for substance abuse programs and services.

(4) The Legislature may refuse to appropriate funds to the division upon the division's failure to comply with the provisions of this part.

Section 12. Section **62A-8-110.5** is repealed and reenacted to read:

**62A-8-110.5. Contracts for substance abuse services -- Provisions -- Responsibilities.**

When the division contracts with a local substance abuse authority to provide substance abuse programs and services in accordance with the provision of this chapter and Title 17A, Chapter 3, Part 7, Local Substance Abuse Authorities, it shall ensure that those contracts include at least the following provisions:

(1) that an independent auditor shall conduct any audit of the local substance abuse authority or its contract provider's programs or services, pursuant to the provisions of Title 51, Chapter 2;

(2) in addition to the requirements described in Title 51, Chapter 2, the division:

(a) shall prescribe guidelines and procedures, in accordance with those formulated by the state auditor pursuant to Section 67-3-1, for auditing the compensation and expenses of officers, directors, and specified employees of the private contract provider, to assure the state that no personal benefit is gained from travel or other expenses; and

(b) may prescribe specific items to be addressed by that audit, depending upon the particular needs or concerns relating to the local substance abuse authority or contract provider at issue;

(3) the local substance abuse authority or its contract provider shall invite and include all funding partners in its auditor's pre- and exit conferences;

(4) each member of the local substance abuse authority shall annually certify that he has received and reviewed the independent audit and has participated in a formal interview with the provider's executive officers;

(5) requested information and outcome data will be provided to the division in the manner and within the time lines defined by the division; and

(6) all audit reports by state or county persons or entities concerning the local substance abuse authority or its contract provider shall be provided to the executive director of the department, the local substance abuse authority, and members of the contract provider's governing board.

Section 13. Section **62A-8-112** is amended to read:

**62A-8-112. Receipt of funds.**

Local substance abuse authorities and entities that contract with these authorities to provide substance abuse services may receive funds made available by federal, state, or local health, substance abuse, education, welfare, or other agencies, in accordance with the provisions of this chapter and Title 17A, Chapter 3, Part 7.

Section 14. Section **62A-12-101** is amended to read:

**62A-12-101. Definitions.**

As used in this chapter:

(1) "Board" means the Board of Mental Health established in accordance with Sections 62A-1-105 and 62A-1-107.

(2) "Director" means the director of the Division of Mental Health.

(3) "Division" means the Division of Mental Health.

(4) "Local mental health authority" means a county legislative body.

(5) (a) "Public funds" means federal monies received from the Department of Human Services or the Department of Health, and state monies appropriated by the Legislature to the Department of Human Services, the Department of Health, a county governing body, or local mental health authority for the purposes of providing mental health programs or services. "Public funds" includes those federal and state monies that have been transferred by a local mental health authority to a private provider under an annual or otherwise ongoing contract to provide comprehensive mental health programs or services for the local mental health authority. Those monies maintain the nature of "public funds" while in the possession of the private entity that has an annual or otherwise ongoing contract with a local mental health authority to provide comprehensive mental health programs or services for the local mental health authority.

(b) This definition of "public funds" does not limit or prohibit an organization exempt under Section 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any financial arrangement that is otherwise lawful for that organization.

[~~(5)~~] (6) "Severe mental disorder" means schizophrenia, major depression, bipolar disorders, delusional disorders, psychotic disorders, and other mental disorders as defined by the board.

Section 15. Section **62A-12-102** is amended to read:

**62A-12-102. Division of Mental Health -- Creation -- Responsibilities.**

(1) There is created the Division of Mental Health within the department, under the administration and general supervision of the executive director, and, with regard to its programs, under the policy direction of the board. The division is the mental health authority for this state.

(2) The division shall:

(a) collect and disseminate information pertaining to mental health;

(b) develop, administer, and supervise a comprehensive state mental health program;

(c) provide direction over the state hospital including approval of its budget, administrative policy, and coordination of services with local service plans;

(d) promote and establish cooperative relationships with courts, hospitals, clinics, medical and social agencies, public health authorities, law enforcement agencies, education and research organizations, and other related groups;

(e) receive [~~and~~], distribute [~~state and federal~~], and provide direction over public funds for mental health services;

(f) consult and coordinate with local mental health authorities regarding mental health programs and services;

~~[(f)]~~ (g) monitor and evaluate programs provided by local mental health authorities~~[, and]~~ with public funds;

(h) examine expenditures of any local, state, and federal funds;

(i) monitor the expenditure of public funds by local mental health authorities and their contract providers;

~~[(g)]~~ (j) contract with local mental health authorities to provide or arrange for a comprehensive continuum of services in accordance with board and division policy, contract provisions, and the local plan;

~~[(h)]~~ (k) contract with private and public entities for special statewide or nonclinical services in accordance with board and division policy;

~~[(i)]~~ (l) review and approve each local mental health [~~authority plans and in order~~] authority's plan, to assure;

(i) a statewide comprehensive continuum of mental health services; and

(ii) appropriate expenditure of public funds;

(m) review and make recommendations regarding each local mental health authority's contract with its provider of mental health programs and services to assure compliance with state and federal law and policy;

~~[(j)]~~ (n) promote or conduct research on mental health issues and submit any recommendations for changes in policy and legislation to the Legislature and the governor;

~~[(k)]~~ (o) withhold funds from local mental health authorities and public and private providers for contract noncompliance, failure to comply with division directives regarding the use of public funds, or for misuse of public funds or monies;

~~[(h)]~~ (p) cooperate with other state, county, nonprofit, and other private entities to prevent duplication of services;

~~[(m)]~~ (q) monitor and assure compliance with board and division policy and contract requirements; and

~~[(n)]~~ (r) perform such other acts as are necessary to promote mental health in the state.

(3) (a) The division may refuse to contract with and may pursue its legal remedies against any local mental health authority that fails, or has failed, to expend public funds in accordance with state law, policy, contract provisions, or directives issued in accordance with state law.

(b) The division may withhold funds from a local mental health authority if the authority's contract with its provider of mental health programs and services fails to comply with state and federal law or policy.

(4) Before reissuing or renewing a contract with any local mental health authority, the division shall review and determine whether the local mental health authority is complying with its oversight and management responsibilities described in Sections 17A-3-602 and 17A-3-603.5. Nothing in this Subsection (4) may be used as a defense to the responsibility and liability described in Section 17A-3-603.5.

~~[(3)]~~ (5) (a) The division may accept, in the name of and on behalf of the state, donations, gifts, devises, or bequests of real or personal property or services to be used as specified by the donor.

(b) Those donations, gifts, devises, or bequests shall be used by the division in the performance of its powers and duties. Any money so obtained shall be considered private nonlapsing funds and shall be deposited into an interest-bearing expendable trust fund to be used by the division for mental health services. The state treasurer may invest the fund and all interest shall remain with the fund.

(6) The division shall annually review with each local mental health authority the authority's

statutory and contract responsibilities regarding:

- (a) the use of public funds;
- (b) oversight responsibilities regarding public funds; and
- (c) governance of mental health programs and services.

Section 16. Section **62A-12-102.5** is amended to read:

**62A-12-102.5. Fees for mental health services.**

(1) The division may, with the approval of the Legislature, the executive director, and the board establish fee schedules and assess fees for services rendered by the division.

(2) Fees shall be charged for mental health services, but services may not be refused to any person because of his [~~ability or~~] inability to pay. Any person who is unable to obtain private care for financial, geographical, or other sufficient reason may be accepted for community mental health services.

Section 17. Section **62A-12-105** is amended to read:

**62A-12-105. Allocation of funds to local mental health authorities -- Formula.**

(1) The board shall establish, by rule, a formula for allocating funds to local mental health authorities through contracts, to provide mental health services in accordance with [~~Section 17A-3-606~~] the provisions of this chapter and of Title 17A, Chapter 3, Part 6, Local Mental Health Authorities. That formula shall provide for allocation of funds based on need. Determination of need shall be based on population, unless the board establishes, by valid and accepted data, that other defined factors are relevant and reliable indicators of need. The formula shall include a differential to compensate for additional costs of providing services in rural areas.

(2) The formula established under Subsection (1) [~~shall be in effect on or before July 1, 1990, and~~] applies to all state and federal funds appropriated by the Legislature to the division for local mental health authorities, but does not apply to:

- (a) funds that local mental health authorities receive from sources other than the division;
- (b) funds that local mental health authorities receive from the division to operate a specific program within its jurisdiction that is available to all residents of the state;
- (c) funds that local mental health authorities receive from the division to meet a need that

exists only within the jurisdiction of that local mental health authority; and

(d) funds that local mental health authorities receive from the division for research projects.

(3) Contracts with local mental health authorities shall provide that the division may withhold funds otherwise allocated pursuant to this section to cover the costs of audits, attorneys' fees, and other expenses associated with reviewing the expenditure of public funds by a local mental health authority or its contract provider, if there has been an audit finding or judicial determination that public funds have been misused by the local mental health authority or its contract provider.

Section 18. Section **62A-12-289** is amended to read:

**62A-12-289. Responsibilities of the Division of Mental Health.**

(1) It is the responsibility of the division to assure that the requirements of this part are met and applied uniformly by local mental health authorities across the state.

(2) Since it is the division's responsibility, under Section 62A-12-102, to contract with, review, ~~[and] approve,~~ and oversee local mental health authority plans, and to withhold funds from local mental health authorities and public and private providers for contract noncompliance or misuse of public funds, the division shall:

(a) require each local mental health authority to submit its plan to the division by May 1 of each year;

~~[(b) forward a copy of each local mental health authority's written plan to the Office of Legislative Research and General Counsel, for review by the Health and Human Services Interim Committee, within ten days after receiving the plan;]~~

~~[(c)]~~ (b) conduct an annual program audit and review of each local mental health authority in the state, and its contract provider; and

~~[(d)]~~ (c) provide a written report to the Health and Human Services Interim Committee on July 1, 1996, and each year thereafter, and provide an oral report to that committee, as ~~[scheduled]~~ requested. That report shall provide information regarding:

(i) the annual ~~[program] audit[;]~~ and review;

(ii) the financial ~~[status]~~ expenditures of each local mental health authority and its contract provider~~[;]~~;

(iii) the status of each local authority's and its contract provider's compliance with its plan, state statutes, and with the provisions of the contract awarded[-]; and

(iv) whether audit guidelines established pursuant to Subsection 62A-12-289.1(2)(a) and Subsection 67-3-1(2)(o) provide the division with sufficient criteria and assurances of appropriate expenditures of public funds.

(3) The annual audit and review described in Subsection (2)(b) shall, in addition to items determined by the division to be necessary and appropriate, include a review and determination regarding whether public funds allocated to local mental health authorities are consistent with services rendered and outcomes reported by it or its contract provider, and whether each local mental health authority is exercising sufficient oversight and control over public funds allocated for mental health programs and services.

(4) The Legislature may refuse to appropriate funds to the division upon the division's failure to comply with the provisions of this part.

Section 19. Section **62A-12-289.1** is enacted to read:

**62A-12-289.1. Contracts with local mental health authorities -- Provisions.**

When the division contracts with a local mental health authority to provide mental health programs and services in accordance with the provision of this chapter and Title 17A, Chapter 3, Part 6, it shall ensure that those contracts include at least the following provisions:

(1) that an independent auditor shall conduct any audit of the local mental health authority or its contract provider's programs or services, pursuant to the provisions of Title 51, Chapter 2;

(2) in addition to the requirements described in Title 51, Chapter 2, the division:

(a) shall prescribe guidelines and procedures, in accordance with those formulated by the state auditor pursuant to Section 67-3-1, for auditing the compensation and expenses of officers, directors, and specified employees of the private contract provider, to assure the state that no personal benefit is gained from travel or other expenses; and

(b) may prescribe specific items to be addressed by that audit, depending upon the particular needs or concerns relating to the local mental health authority or contract provider at issue;

(3) the local mental health authority or its contract provider shall invite and include all

funding partners in its auditor's pre- and exit conferences;

(4) each member of the local mental health authority shall annually certify that he has received and reviewed the independent audit and has participated in a formal interview with the provider's executive officers;

(5) requested information and outcome data will be provided to the division in the manner and within the timelines defined by the division;

(6) all audit reports by state or county persons or entities concerning the local mental health authority or its contract provider shall be provided to the executive director of the department, the local mental health authority, and members of the contract provider's governing board; and

(7) the local mental health authority or its contract provider will offer and provide mental health services to residents who are indigent and who meet state criteria for serious and persistent mental illness or severe emotional disturbance.

Section 20. Section **67-3-1** is amended to read:

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

(1) (a) The state auditor shall be the auditor of public accounts and as such shall be independent of any executive or administrative officers of the state.

(b) He is not limited in the selection of his personnel or in the determination of the reasonable and necessary expenses of his office.

(2) The state auditor shall:

(a) examine and certify annually in respect to each fiscal year, financial statements showing the condition of the state's finances, the revenues received or accrued, expenditures paid or accrued, and the amount of unexpended or unencumbered balances of the appropriations to the agencies, departments, divisions, commissions, and institutions and the cash balances of the funds in the custody of the state treasurer. The Division of Finance shall prepare the foregoing financial statements and other reports in accordance with legal requirements and generally-accepted accounting principles for the state auditor's examination and certification, as requested and not later than 60 days following such requests or the end of each fiscal year. The auditor shall file the statements with the governor and the Legislature[-];

(b) (i) audit each permanent fund, each special fund, the General Fund, and the accounts of any department of state government or any independent agency or public corporation on a regular basis as the auditor shall determine necessary or upon request of the governor or the Legislature. These audits are to be performed in accordance with generally accepted auditing standards and other auditing procedures as promulgated by recognized authoritative bodies. The audits shall be conducted to determine honesty and integrity in fiscal affairs, accuracy and reliability of financial statements, effectiveness and adequacy of financial controls, and compliance with the law, as the auditor shall determine necessary[-];

(ii) in the event that any state entity receives federal funding, the audit shall be performed in accordance with federal audit requirements under the direction of the state auditor. The costs of the federal compliance portion of the audit may be paid from an appropriation to the state auditor from the General Fund. If an appropriation is not provided, or if the federal government does not specifically provide for payment of audit costs, the costs of the federal compliance portions of the audit shall be allocated on the basis of the percentage that each state entity's federal funding bears to the total federal funds received by the state. The allocation shall be adjusted to reflect any reduced audit time required to audit funds passed through the state to local governments and to reflect any reduction in audit time obtained through the use of internal auditors working under the direction of the state auditor[-];

(c) present to the governor on October 1st of each year and to the Legislature on the first day of each annual general session, a statement of his appropriation expenditures segregated as to cost of salaries, travel, office and other expenses, and capital outlay for equipment, together with his recommendations as to new legislation and a complete record of the accomplishments of his office for the preceding year[-];

(d) issue subpoenas requiring any person who has had financial transactions with the state to appear before him and to answer under oath, orally or in writing, as to any facts concerning these transactions; and for the purpose of obtaining any such facts the state auditor is empowered to administer oaths[-];

(e) require, in his discretion, all persons who have had the disposition or management of any

property of this state to render statements regarding it to him, and each of these persons must render the statements at such times and in such form as the auditor may require[-];

(f) except where otherwise provided by law, institute suits in relation to the assessment, collection, and payment of its revenues against persons who by any means have become entrusted with public monies or property and have failed to pay over or deliver the same and against all debtors of the state, all of which suits of the courts of the county in which the seat of government may be located shall have jurisdiction without regard to the residence of the defendants[-];

(g) authenticate with his official seal all copies of papers issued from his office as he considers necessary[-];

(h) collect and pay into the state treasury all fees received by him[-];

(i) perform the duties of a member of all boards of which he is or may be made a member by the constitution or laws of the state, and such other duties as are prescribed by the constitution and by law[-];

(j) stop the payment of the salary of any state official or state employee who refuses to settle his accounts or render such statements as may be required with respect to the custody and disposition of public funds or other state property or who refuses, neglects, or ignores the instruction of the state auditor or any controlling board or department head with respect to the manner of keeping prescribed accounts or funds or who fails to correct any delinquencies, improper procedures, and errors brought to his attention[-];

(k) establish accounting systems, methods, and forms for public accounts in all taxing units of the state in the interest of uniformity, efficiency, and economy[-];

(l) superintend the contractual auditing of all state accounts[-];

(m) withhold state allocated funds or the disbursement of property taxes from any state taxing unit, if necessary, to ensure that officials and employees in those taxing units of the state comply with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds. Except as otherwise specified in the law, funds may not be withheld until a taxing unit has received formal written notice of noncompliance from the auditor and has been given 60 days to make the specified corrections[-];

(n) withhold the disbursement of tax monies from any county, if necessary, to ensure that officials and employees in the county comply with Section 59-2-303.1. For purposes of this subsection, funds may not be withheld until a county has received formal written notice of noncompliance from the auditor and has been given 60 days to make the specified corrections[-]; and

(o) establish audit guidelines and procedures for audits of local mental health and substance abuse authorities and their contract providers, conducted pursuant to Title 17A, Chapter 3, Parts 6 and 7, Title 62A, Chapters 8 and 12, and Title 51, Chapter 2. Those guidelines and procedures shall be established for the purpose of providing assurances to the state that:

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

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

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

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

(3) The state auditor may not audit work he performed before becoming state auditor. In the event that the state auditor has previously been a responsible official in state government whose work has not yet been audited, the Legislature shall designate how such work shall be audited and shall provide additional funding for such audits, if necessary.

(4) The following records in the custody or control of the state auditor shall be protected records under Title 63, Chapter 2, Government Records Access and Management Act:

(a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a past or present governmental employee if the information or allegation cannot be corroborated by the state auditor through other documents or evidence, and the records relating to the allegation are not relied upon by the state auditor in

preparing a final audit report;

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

(c) prior to the time that an audit is completed and the final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for their response or information;

(d) records that would disclose an outline or part of any audit survey plans or audit program;

(e) requests for audits, if disclosure would risk circumvention of an audit;

(f) the provisions of Subsections (a), (b), and (c) do not prohibit the disclosure of records or information that relate to a violation of the law by a governmental entity or employee to a government prosecutor or peace officer; and

(g) the provisions of this section do not limit the authority otherwise given to the state auditor to classify a document as public, private, controlled, or protected under Title 63, Chapter 2, Government Records Access and Management Act.

Section 21. Section **76-8-401** is amended to read:

**76-8-401. "Public monies" and "public officer" defined.**

As used in this title:

(1) "Public monies" [means] and "public funds" [as defined in Section 51-7-3] mean monies, funds, and accounts, regardless of the source from which they are derived, that are owned, held, or administered by the state or any of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories, or other similar instrumentalities, or any county, city, school district, political subdivision, or other public body. "Public monies" also includes monies, funds, or accounts that have been transferred by any of those public entities to a private contract provider of programs or services. Those monies, funds, or accounts maintain the nature of public monies while in the possession of the private entity that has contracted with a public entity to provide programs or

services.

(2) "Public officer" means:

(a) all elected officials of the state, a political subdivision of the state, a county, town, city, precinct, or district;

(b) a person appointed to or serving an unexpired term of an elected office;

(c) a judge of a court of record and not of record including justice court judges; and

(d) a member of the Board of Pardons and Parole.

Section 22. Section **76-8-402** is amended to read:

**76-8-402. Misusing public monies.**

(1) Every public officer of this state or a political subdivision, or of any county, city, town, precinct, or district of this state, and every other person charged, either by law or under contract, with the receipt, safekeeping, transfer [or], disbursement, or use of public monies commits an offense if the officer or other charged person:

(a) appropriates the money or any portion of it to his own use or benefit or to the use or benefit of another without authority of law;

(b) loans or transfers the money or any portion of it without authority of law;

(c) fails to keep the money in his possession until disbursed or paid out by authority of law;

(d) unlawfully deposits the money or any portion in any bank or with any other person;

(e) knowingly keeps any false account or makes any false entry or erasure in any account of or relating to the money;

(f) fraudulently alters, falsifies, conceals, destroys, or obliterates any such account;

(g) willfully refuses or omits to pay over, on demand, any public monies in his hands, upon the presentation of a draft, order, or warrant drawn upon such monies by competent authority;

(h) willfully omits to transfer the money when the transfer is required by law; or

(i) willfully omits or refuses to pay over, to any officer or person authorized by law to receive it, any money received by him under any duty imposed by law so to pay over the same. (2) A violation of Subsection (1) is a felony of the third degree, except it is a felony of the second degree if:

- (a) the value of the money exceeds \$5,000;
- (b) the amount of the false account exceeds \$5,000;
- (c) the amount falsely entered exceeds \$5,000;
- (d) the amount that is the difference between the original amount and the fraudulently altered amount exceeds \$5,000; or
- (e) the amount falsely erased, fraudulently concealed, destroyed, obliterated, or falsified in the account exceeds \$5,000.

(3) In addition to the penalty described in Subsection (2), a public officer who violates Subsection (1) is subject to the penalties described in Section 76-8-404.

Section 23. Section **76-8-404** is amended to read:

**76-8-404. Making profit from or misusing public monies -- Knowledge of another's profit or misuse -- Disqualification from office -- Criminal penalty.**

A public officer, regardless of whether or not the officer receives, safekeeps, transfers, disburses, or has a fiduciary relationship with public monies, who ~~[shall make]~~ makes a profit from or out of public monies, or [shall use the same] who uses public monies in a manner or for a purpose not authorized by law, is guilty of a felony as provided in Section 76-8-402 and shall, in addition to the punishment provided by law, be disqualified to hold public office.

Section 24. **Repealer.**

This act repeals:

Section **17A-3-612, Continuation of existing services or facilities.**

Section 25. **Effective date.**

This act takes effect on July 1, 1999.