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**Sponsor: John W. Hickman**

, as last amended by Chapter 206, Laws of Utah 1993

**9-2-1303**

, as last amended by Chapter 6, Laws of Utah 1996

**9-2-1306**

, as repealed and reenacted by Chapter 206, Laws of Utah 1993

**9-2-1308**

, as last amended by Chapter 6, Laws of Utah 1996

**9-2-1311**

, as last amended by Chapter 200, Laws of Utah 1995

**51-5-4.5**

, as repealed and reenacted by Chapter 285, Laws of Utah 1992

**51-7-4**

, as last amended by Chapters 82 and 375, Laws of Utah 1997

**63-38-9.5**

, as enacted by Chapter 259, Laws of Utah 1992

- 28           **63-55-209**, as last amended by Chapter 13, Laws of Utah 1998
- 29           **63-56-5**, as last amended by Chapters 89 and 252, Laws of Utah 1997
- 30           **63-95-102**, as enacted by Chapter 152, Laws of Utah 1998
- 31           **63A-1-113**, as renumbered and amended by Chapter 212, Laws of Utah 1993

32 ENACTS:

- 33           **9-7-708**, Utah Code Annotated 1953
- 34           **9-7-709**, Utah Code Annotated 1953
- 35           **9-7-710**, Utah Code Annotated 1953
- 36           **9-7-711**, Utah Code Annotated 1953

37 REPEALS:

- 38           **9-2-701**, as renumbered and amended by Chapter 241, Laws of Utah 1992
- 39           **9-2-702**, as renumbered and amended by Chapter 241, Laws of Utah 1992
- 40           **9-2-703**, as renumbered and amended by Chapter 241, Laws of Utah 1992
- 41           **9-2-704**, as last amended by Chapter 243, Laws of Utah 1996
- 42           **9-2-705**, as renumbered and amended by Chapter 241, Laws of Utah 1992
- 43           **9-2-706**, as last amended by Chapter 10, Laws of Utah 1997
- 44           **9-2-707**, as last amended by Chapter 4, Laws of Utah 1993
- 45           **9-2-1312**, as last amended by Chapter 206, Laws of Utah 1993

46 This act enacts uncodified material.

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

48           Section 1. Section **9-2-1302** is amended to read:

49           **9-2-1302. Definitions.**

50           As used in this part:

- 51           (1) "Fund" means the Utah Capital Access Fund created under this part.
- 52           (2) "Lender's Fund reserve account" means a separate account within the fund created for
- 53 each participating lender into which premium charges paid by the lender and borrowers are
- 54 deposited.
- 55           (3) "Loss" includes any losses on:
  - 56           (a) the enrolled loan revolving principal[;];
  - 57           (b) accrued interest[;]; and
  - 58           (c) documented out-of-pocket expenses.

59 (4) "Participating lender" means any state or federally regulated financial institution or  
60 branch [thereof] of a regulated financial institution that:

61 (a) has commercial lending experience; and

62 (b) to qualify for loan loss or default protection, enters into an arrangement with the [~~Utah  
Technology Finance Corporation~~] \_\_\_\_\_ under this chapter to:

(i) establish a special loan portfolio\_ and [to

65 (ii) \_\_\_\_\_ in order to qualify for loan loss or default

66 \_\_\_\_\_].

67 (a) "Special loan portfolio" means any loan or loans filed for enrollment with the [~~Utah  
Technology Finance Corporation~~ department under this part [\_\_\_\_\_] to be covered against

69

70 (b)

71 (6) "State fund reserve account" means a separate account within the fund into which a  
transfer of matching funds from the Capital Access Fund is made for each participating lender.

73 **9-2-1303** is amended to read:

**9-2-1303.**

75 (1) \_\_\_ There is created within the office of the state treasurer the Utah Capital Access

76

77 (b)

78 more readily available to small businesses in Utah of a size that may be eligible for Small Business  
Administration loans under 13 C.F.R. Sec. 121.1.

80 \_\_\_ The fund shall consist of:

(i) any money appropriated by the Legislature[-];

(ii) fees and premiums paid by participating lenders and borrowers[-];

(iii) any other money from any other source, public or private[-];

84 (iv)

85 (2) The [\_\_\_\_\_]

86 \_\_\_\_\_ shall:

(a) administer and supervise the fund in all aspects\_ and [shall

88 (b) \_\_\_\_\_ ;

89 \_\_\_ lending institutions; to]

90           (ii) any business in Utah of a size that may be eligible for Small Business Administration  
91 loans under 13 C.F.R. Sec. 121.1.

92           Section 3. Section **9-2-1304** is amended to read:

93           **9-2-1304. Lender's fund reserve accounts.**

94           (1) (a) The [~~Utah Technology Finance Corporation~~] department shall establish a separate  
95 lender's fund reserve account for each participating lender at the participating lender's institution.

96           (b) Each lender's fund reserve account shall consist of:

97           (i) the fees and premiums paid by the participating lenders and borrowers[~~, together with~~];

98 and

99           (ii) interest and income earned on [~~these~~] the monies described in Subsection (1)(b)(i).

100           (c) Monies in the lender's fund reserve account may be considered an asset of that  
101 participating lender.

102           (d) Except for withdrawals permitted by Section 9-2-1310 [~~upon~~] on termination of  
103 participation in the fund, monies in the lender's fund reserve account may be used, pledged, and  
104 dedicated only to offset losses on loans within the special loan portfolio of the participating lender.

105           (2) (a) The [~~Utah Technology Finance Corporation~~] department shall request that the state  
106 treasurer [~~to~~] establish a separate state fund reserve account within the fund for each participating  
107 lender.

108           (b) Each state fund reserve account shall consist of:

109           (i) the state matching funds as determined in accordance with Subsection 9-2-1306(3)[~~,~~

110 together with]; and

111           (ii) interest earned on [~~these~~] the monies described in Subsection (2)(b)(i).

112           (c) Monies in the state fund reserve account are an asset of the state.

113           (d) Monies in the state fund reserve account of a participating lender may be used, pledged,  
114 and dedicated only to offset losses on loans within the special loan portfolio of the participating  
115 lender.

116           (e) When a participating lender cancels or terminates participation in the Capital Access  
117 Program, the monies in the participating lender's state fund reserve account revert back to the  
118 Capital Access Fund.

119           Section 4. Section **9-2-1306** is amended to read:

120           **9-2-1306. Premiums -- Administrative costs -- Transfers.**

(1) (a) When a participating lender makes a loan that qualifies it to be placed within a

122

123 participating lender and the borrower shall be prescribed by the participating lender.

(b) [~~The~~ Notwithstanding Subsection (1)(a), the amount paid \_\_\_\_\_

125

(i) \_\_\_\_\_ :

126

\_\_\_\_ less than 0.5% of the principal amount of the loan [~~nor~~]; or

127

(B) \_\_\_\_\_ .]; and

128

[~~(c) The amount paid~~] (ii) by the participating lender shall be equal to the amount paid by

129

the borrower.

130

(d) [~~This~~] The amount described in Subsection (1)(b)(ii) shall [~~then~~] be deposited into the

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lender's fund reserve account.

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(e) (i) Except as provided in Subsection (1)(e)(ii), the participating lender may recover

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from the borrower the cost of the participating lender's payment in any manner agreed to by the

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participating lender and the borrower.

135

(ii) Notwithstanding Subsection (1)(e)(i), the total premium charge paid by the borrower

136

to the lender's fund reserve account may not exceed 6% of the principal amount of the loan.

137

(2) (a) The [~~Utah Technology Finance Corporation~~] department may use the interest earned

138

on money in the state fund reserve account for costs incurred in administering the fund.

139

(b) Any interest remaining in the lender's fund reserve account shall remain in the account

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until:

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(i) a claim is filed in accordance with Section 9-2-1308; or [~~until~~]

142

(ii) it is withdrawn under Section 9-2-1310.

143

(3) When enrolling a loan, the [~~Utah Technology Finance Corporation~~] department shall

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request the treasurer to transfer into the state fund reserve account an amount determined as

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follows:

146

(a) if the amount of any loan made by a participating lender, plus the amount of loans

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previously enrolled by that participating lender, is less than \$750,000, the [~~Utah Technology~~

148

~~Finance Corporation~~] department shall request the state treasurer to deposit into the state fund

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reserve account [~~in each case~~] an amount equal to:

150

(i) 250% of the combined amounts paid into the lender's fund reserve account in all areas

151

of the state except those designated as enterprise zones under Title 9, Chapter 2, Part 4; or

152 (ii) 300% of the combined amounts paid into the lender's fund reserve account in areas  
153 designated as enterprise zones under Title 9, Chapter 2;

154 (b) if, before the enrollment of the loan, the amount of loans previously enrolled equals  
155 or exceeds \$750,000, the [~~Utah Technology Finance Corporation~~] department shall request the  
156 state treasurer to transfer into the state fund reserve account an amount equal to the amounts paid  
157 into the lender's fund reserve account; and

158 (c) if the amount of loans previously enrolled by a participating lender is less than  
159 \$750,000 but the enrollment of a loan will cause the aggregate amount of all loans enrolled by that  
160 participating lender to exceed \$750,000, the [~~Utah Technology Finance Corporation~~] department  
161 shall request the state treasurer to transfer into the state fund reserve account an amount equal to  
162 a percentage of the amount paid into the lender's fund reserve account, determined by:

163 (i) multiplying [~~by 250% for loans in areas described in Subsection (3)(a)(i), and by 300%~~  
164 ~~for loans in areas described in Subsection (3)(a)(ii)] that portion of the loan which when added to~~  
165 ~~the amount of all previously enrolled loans totals \$750,000~~ by:

166 (A) 250% for loans in areas described in Subsection (3)(a)(i); and

167 (B) 300% for loans in areas described in Subsection (3)(a)(ii);

168 (ii) multiplying the balance of the loan by 100%; and

169 (iii) adding [~~together the products of such computations~~] the amount under Subsection  
170 (3)(c)(i) with the amount under Subsection (3)(c)(ii); and

171 (iv) dividing the [sum] amount under Subsection (3)(c)(iii) by the total amount of the loan.

172 (4) In any three-year period, the [~~Utah Technology Finance Corporation~~] department may  
173 not request the treasurer to transfer more than \$100,000 from the fund into any state fund reserve  
174 account for any one borrower.

175 Section 5. Section **9-2-1307** is amended to read:

176 **9-2-1307. Enrolling.**

177 (1) For each loan to be covered under this [~~chapter, each~~] part, the participating lender  
178 shall enroll the loan with the [~~Utah Technology Finance Corporation~~] department within ten days  
179 after the loan is made.

180 (2) The [~~Utah Technology Finance Corporation~~] department shall keep an accurate record  
181 of:

182 (a) the participating lender's special loan portfolio[.];

183 (b) the lender's fund reserve account~~[,]~~; and

184 (c) the related state fund reserve account.

185 (3) The ~~[Utah Technology Finance Corporation]~~ department shall develop a contract to  
186 be used between the participating lender and the borrower that shall adequately protect the state's  
187 interest in collateral used to secure loans and other interests of the state that the ~~[Utah Technology~~  
188 ~~Finance Corporation]~~ department considers necessary.

189 Section 6. Section **9-2-1308** is amended to read:

190 **9-2-1308. Loan losses -- Claims.**

191 (1) (a) If any loss or default occurs on any loan within a participating lender's special loan  
192 portfolio, the lender shall file a claim with the ~~[Utah Technology Finance Corporation]~~ department  
193 after the lender has charged off all or part of the loan as a loss.

194 (b) The participating lender may claim any amount up to the actual amount lost from the  
195 lender's fund reserve account and from the related state fund reserve account to cover that loss or  
196 default.

197 ~~[(1)]~~ (2) If the amount in the fund reserve account is insufficient to cover the loss, and the  
198 amount of the loans previously enrolled by that participating lender is \$750,000 or more, the  
199 participating lender shall absorb the loss and the ~~[Utah Technology Finance Corporation]~~  
200 department, the state and the state's agencies, instrumentalities, and political subdivision are not  
201 liable for any such losses.

202 ~~[(2)]~~ (3) If the amount in the fund reserve account is insufficient to cover the entire amount  
203 of that claim, and the amount of loans previously enrolled by that participating lender is less than  
204 \$750,000, the ~~[Utah Technology Finance Corporation]~~ department shall pay to the participating  
205 lender an amount equal to the current balance in the fund reserve account. That claim shall then  
206 be held in abeyance until the remaining balance of the claim is not greater than 75% of the balance  
207 in the fund reserve account, then the ~~[Utah Technology Finance Corporation]~~ department, upon  
208 the request of the lender, shall pay the remaining balance of the claim.

209 ~~[(3)]~~ (4) If a participating lender makes a claim and there are sufficient monies in the fund  
210 reserve accounts, the claim shall be paid from the fund reserve accounts in the same proportions  
211 as the contributions and transfers to the fund reserve accounts upon enrollment of the loan.

212 Section 7. Section **9-2-1310** is amended to read:

213 **9-2-1310. Termination -- Withdrawal.**

214 (1) (a) If matching money is no longer available in the fund, the [~~Utah Technology Finance~~  
215 ~~Corporation~~] department may terminate its obligation under this part to enroll loans.

216 (b) If a participating lender fails to comply with the intent or provisions of this part or with  
217 [~~the provisions of~~] any agreement entered into pursuant to this part, the [~~Utah Technology Finance~~  
218 ~~Corporation~~] department may terminate its obligation under this part to enroll loans for that  
219 participating lender.

220 (2) (a) The termination described in Subsection (1) shall be applicable on the effective date  
221 specified in the notice of termination, except that the termination may not apply to any loan made  
222 on or before the date on which the notice of termination is received by the participating lender.

223 (b) If the [~~Utah Technology Finance Corporation~~] department is terminating the enrollment  
224 of loans [~~not merely for the participating lender but instead~~] for all participating lenders under this  
225 part, the [~~Utah Technology Finance Corporation~~] department shall [~~provide notice of~~] notify  
226 participating lenders at least 90 days [~~to the participating lender~~] before the day the enrollment of  
227 loans is terminated.

228 (c) Any terminations under Subsection (1) shall be prospective only, and do not apply to  
229 any loans previously enrolled under this [~~chapter~~] part, except that if a previously enrolled loan is  
230 refinanced, the amount covered under this part may not be increased beyond the covered amount  
231 as previously enrolled.

232 (3) (a) (i) Any participating lender may withdraw from the Capital Access Program under  
233 this part upon written notice to the [~~Utah Technology Finance Corporation~~] department 30 days  
234 before the date of withdrawal.

235 (ii) This withdrawal shall be applicable on the effective date specified in the notice of  
236 withdrawal, except that the withdrawal may not apply to any unpaid loan made on or before the  
237 date on which the notice of withdrawal is received by the [~~Utah Technology Finance Corporation~~]  
238 department.

239 (b) Any withdrawals under this [~~subsection~~] Subsection (3) shall be prospective only, and  
240 do not apply to any unpaid loans previously enrolled under this [~~chapter~~] part, except that if a  
241 previously enrolled loan is refinanced, the amount covered under this part may not be increased  
242 beyond the covered amount as previously enrolled.

243 (c) (i) If a participating lender chooses to withdraw, it may claim monies left in the lender's  
244 fund reserve account.



245 (ii) Any such withdrawal may not have the effect of exposing the state or the [Utah  
246 Technology Finance Corporation] department to any loss or default on any loan made by the  
247 withdrawing participating lender.

248 Section 8. Section **9-2-1311** is amended to read:

249 **9-2-1311. Reports -- Audits.**

250 (1) (a) The [~~Utah Technology Finance Corporation~~] department shall report to the  
251 Legislature at least quarterly on the activities of the fund.

252 (b) The report shall include:

- 253 (i) information on location of all borrowers and participating lenders;  
254 (ii) the amount and type of financial assistance being requested; and  
255 (iii) the type of project or product being financed.

256 (2) (a) The [~~Utah Technology Finance Corporation~~] department shall provide monthly  
257 transaction reports to each participating lender that identify:

- 258 (i) the balance in the lender's state fund reserve account;  
259 (ii) payments and transfers into that account; and  
260 (iii) withdrawals from that account.

261 (b) Participating lenders may review the records of the [Utah Technology Finance  
262 Corporation] department that account for payments and transfers into the account and withdrawals  
263 from the account at the [~~office of the Utah Technology Finance Corporation~~] department during  
264 normal business hours.

265 (3) (a) Each participating lender shall provide monthly transaction reports to the [Utah  
266 Technology Finance Corporation] department that identify:

- 267 (i) the balance in the lender's fund reserve account;  
268 (ii) payments and transfers into the account; and  
269 (iii) withdrawals from the account.

270 (b) Each participating lender shall allow the [Utah Technology Finance Corporation]  
271 department to review, during normal business hours, its records that account for:

- 272 (i) payments and transfers into the account;  
273 (ii) withdrawals from the account; and  
274 (iii) interest or income earned on the monies credited to the account.

275 (4) (a) The state auditor, or a certified public accountant appointed by the state auditor,

276 annually shall conduct and remit to the Legislature a program and financial audit of the fund and,  
277 in the conduct of the audit, shall have access to all records of the fund at any time, whether or not  
278 confidential.

279 (b) Each audit required by this section shall include a determination of whether the fund  
280 is likely to be able to continue to meet its obligations, including a report on the status of  
281 outstanding loans and agreements made by the fund.

282 Section 9. Section **9-7-708** is enacted to read:

283 **9-7-708. Definitions -- Coordination with other statutes.**

284 (1) For purposes of this part:

285 (a) "Corporation" means the Utah Technology Finance Corporation.

286 (b) "Date of dissolution" means the date the articles of dissolution are filed with the  
287 Division of Corporations and Commercial Code.

288 (c) "Supporting foundation" means the Utah Technology Equity Foundation.

289 (2) Notwithstanding Title 16, Chapter 6, Utah Nonprofit Corporation and Co-operative  
290 Association Act, this part governs the dissolution of the corporation and the supporting foundation.

291 Section 10. Section **9-7-709** is enacted to read:

292 **9-7-709. Dissolution of Utah Technology Finance Corporation and its supporting**  
293 **foundation.**

294 (1) (a) The corporation and its supporting foundation shall be dissolved on or before  
295 January 1, 2000, and may not operate on or after the date of dissolution.

296 (b) Notwithstanding Subsection (1)(a), the department may delay the date of dissolution  
297 of the corporation or supporting foundation until on or before March 30, 2000, if the department  
298 determines that dissolution by January 1, 2000:

299 (i) is impossible; or

300 (ii) would be against the best interests of the state.

301 (c) The Legislature may repeal or modify this part.

302 (2) On or after May 3, 1999, the corporation may not:

303 (a) accept applications for or issue a loan or grant;

304 (b) enter into any contract or agreement to administer a loan or grant not administered by  
305 the corporation before May 3, 1999; or

306 (c) receive any monies that the corporation did not have the right to receive before May

307 3, 1999.

308 (3) By no later than October 1, 1999, the corporation, subject to the approval of the  
309 department, shall adopt a plan of dissolution consistent with this section. The plan shall provide  
310 that:

311 (a) the corporation shall file:

312 (i) articles of dissolution with the Division of Corporations and Commercial Code; and

313 (ii) all necessary documents with the Salt Lake County Clerk to transfer title to the  
314 property located at 185 South State, Salt Lake City, Utah, to the Division of Facilities

315 Construction and Management;

316 (b) the corporation shall distribute its assets as follows:

317 (i) all liabilities and obligations of the corporation shall be paid, satisfied and discharged,  
318 or adequately provided for;

319 (ii) if the dissolution causes a condition to occur that requires the return, transfer, or  
320 conveyance of an asset held by the corporation, the corporation shall return, transfer, or convey the  
321 asset in accordance with that requirement;

322 (iii) the real property owned by the corporation shall be conveyed to the Division of  
323 Facilities Construction and Management; and

324 (iv) any remaining assets shall be distributed to the department;

325 (c) (i) the department shall administer all loans:

326 (A) outstanding on the date of dissolution;

327 (B) that are not sold to a private entity;

328 (C) issued in whole or in part by the corporation;

329 (D) to the same extent that the corporation administered the loans before the date of  
330 dissolution; and

331 (E) in accordance with the terms of the loans;

332 (ii) for monies received by the department in the administration of a loan described in  
333 Subsection (3)(c)(i):

334 (A) if the monies that funded the loan were not obtained from the state, return the money  
335 to the entity that provided the monies if required by that entity; and

336 (B) transfer all monies not returned under Subsection (3)(c)(ii)(A) to the state treasurer for  
337 deposit into the General Fund;

338 (d) the corporation shall provide in a manner that is not a breach of a contract for the  
339 termination of any contract that the corporation has entered into to administer loans for another  
340 entity; and

341 (e) the corporation shall terminate the employment of all employees by no later than the  
342 date of dissolution.

343 (4) By no later than September 1, 1999, the supporting foundation, subject to the approval  
344 of the department, shall adopt a plan of dissolution consistent with this section. The plan shall  
345 provide that:

346 (a) the supporting foundation shall file articles of dissolution with the Division of  
347 Corporations and Commercial Code; and

348 (b) the supporting foundation distribute its assets as follows:

349 (i) all liabilities and obligations of the supporting foundation shall be paid, satisfied and  
350 discharged, or adequately provided for;

351 (ii) the supporting foundation's interest in the following shall be sold and the proceeds  
352 given to the state treasurer:

353 (A) Wasatch Venture Capital Fund I; and

354 (B) stock owned or held by the supporting foundation; and

355 (iii) any remaining assets shall be distributed to the state treasurer.

356 (5) At the request of the department, the Attorney General shall provide the department  
357 with legal assistance in the department's approval of the plans of dissolution of the corporation and  
358 the supporting foundation.

359 (6) The department shall report the terms of the plans of dissolution required under  
360 Subsections (3) and (4) to the Business, Labor, and Economic Development Interim Committee  
361 by no later than November 30, 1999.

362 Section 11. Section **9-7-710** is enacted to read:

363 **9-7-710. No state liability.**

364 Notwithstanding Title 63, Chapter 30, Utah Governmental Immunity Act, a governmental  
365 entity, as defined in Section 63-30-2, is immune from suit based on, derived from, or pertaining  
366 to:

367 (1) any contract, act, omission, obligation, duty, or responsibility of, or any claim,  
368 judgment, or penalty against:

- 369 (a) the corporation;  
370 (b) the supporting foundation;  
371 (c) a trustee of the corporation or supporting foundation;  
372 (d) an officer of the corporation or supporting foundation;  
373 (e) an employee of the corporation or supporting foundation; or  
374 (f) a representative or agent of the corporation or supporting foundation; or  
375 (2) the dissolution of the corporation or supporting foundation.

376 Section 12. Section **9-7-711** is enacted to read:

377 **9-7-711. Department responsibility after dissolution.**

378 (1) (a) The department shall administer all loans:

379 (i) that are outstanding on the date of dissolution;

380 (ii) that are not sold to a private entity;

381 (iii) that have been issued in whole or in part by the corporation;

382 (iv) to the same extent that the corporation administered the loans prior to dissolution; and

383 (v) in accordance with the terms of the loans.

384 (b) For monies received by the department in the administration of a loan described in

385 Subsection (1)(a), the department shall:

386 (i) if the monies that funded the loan were not obtained from the state, return the money  
387 to the entity that provided the monies if required by that entity; and

388 (ii) transfer all monies not returned under Subsection (1)(b)(i) to the state treasurer for  
389 deposit into the General Fund.

390 (2) The department may not issue any grant or loan:

391 (a) with monies received by the administration of a loan described in Subsection (1)(a);

392 or

393 (b) based on this part.

394 (3) Beginning in the year 2002 and ending in the year 2007, the department shall annually  
395 report to the Business, Labor, and Economic Development Interim Committee by no later than  
396 November 30:

397 (a) the status of the loans administered by the department under this part; and

398 (b) concerns, if any, related to the dissolution of the corporation and the supporting  
399 foundation.

400 Section 13. Section **11-37-101** is amended to read:

401 **11-37-101. Definition -- Procurement -- Use of recycled goods.**

402 (1) "Local government entity" means:

403 (a) municipalities, cities, and counties;

404 (b) entities created under Title 26A, Chapter 1, Local Health Department Act; and

405 (c) political subdivisions created by cities or counties, including entities created under:

406 (i) Title 11, Chapter 13, Interlocal Co-operation Act; and

407 (ii) Title 9, Chapter 4, Part 9, Utah Housing Finance Agency Act[~~; and~~].

408 [~~(iii) Title 9, Chapter 2, Part 7, Utah Technology Finance Corporation Act.~~]

409 (2) The procurement officer or other person responsible for purchasing supplies for each

410 local government entity shall:

411 (a) maintain for reference a copy of the current listing of recycled items available on state  
412 contract as issued by the chief procurement officer under Section 63-56-9; and

413 (b) give recycled items consideration when inviting bids and purchasing supplies.

414 Section 14. Section **51-5-4.5** is amended to read:

415 **51-5-4.5. Housing Finance Agency exempt.**

416 The Utah Housing Finance Agency [~~and the Utah Technology Finance Corporation are~~]  
417 is exempt from this chapter.

418 Section 15. Section **51-7-2** is amended to read:

419 **51-7-2. Exemptions from chapter.**

420 The following funds are exempt from this chapter:

421 (1) funds invested in accordance with the participating employees' designation or direction  
422 pursuant to a public employees' deferred compensation plan established and operated in  
423 compliance with Section 457 of the Internal Revenue Code of 1954, as amended;

424 (2) funds of the Utah Workers' Compensation Fund;

425 (3) funds of the Utah State Retirement Board; and

426 [~~(4) funds of the Utah Technology Finance Corporation; and~~]

427 [(~~5~~)] (4) funds of the Utah Housing Finance Agency.

428 Section 16. Section **51-7-4** is amended to read:

429 **51-7-4. Transfer of functions, powers, and duties relating to public funds to state**  
430 **treasurer -- Exceptions -- Deposit of income from investment of state money.**

431 (1) Unless otherwise required by the Utah Constitution or applicable federal law, the  
432 functions, powers, and duties vested by law in each and every state officer, board, commission,  
433 institution, department, division, agency, and other similar instrumentalities relating to the deposit,  
434 investment, or reinvestment of public funds, and the purchase, sale, or exchange of any  
435 investments or securities of or for any funds or accounts under the control and management of  
436 these instrumentalities, are transferred to and shall be exercised by the state treasurer, except:

437 (a) funds assigned to the Utah State Retirement Board for investment under Section  
438 49-1-302;

439 (b) funds of member institutions of the state system of higher education:

440 (i) acquired by gift, devise, or bequest, or by federal or private contract or grant;

441 (ii) derived from student fees or from income from operations of auxiliary enterprises,  
442 which fees and income are pledged or otherwise dedicated to the payment of interest and principal  
443 of bonds issued by such institutions; and

444 (iii) any other funds which are not included in the institution's work program as approved  
445 by the State Board of Regents;

446 [~~(c)~~ funds of the Utah Technology Finance Corporation;]

447 [~~(d)~~] (c) inmate funds as provided in Section 64-13-23 or in Title 64, Chapter 9b;

448 [~~(e)~~] (d) trust funds established by judicial order;

449 [~~(f)~~] (e) funds of the Utah Workers' Compensation Fund; and

450 [~~(g)~~] (f) funds of the Utah Housing Finance Agency.

451 (2) All public funds held or administered by the state or any of its boards, commissions,  
452 institutions, departments, divisions, agencies, or similar instrumentalities and not transferred to the  
453 state treasurer as provided by this section shall be:

454 (a) deposited and invested by the custodian in accordance with this chapter, unless  
455 otherwise required by statute or by applicable federal law; and

456 (b) reported to the state treasurer in a form prescribed by the state treasurer.

457 (3) Unless otherwise provided by the constitution or laws of this state or by contractual  
458 obligation, the income derived from the investment of state money by the state treasurer shall be  
459 deposited in and become part of the General Fund.

460 Section 17. Section **63-5b-102** is amended to read:

461 **63-5b-102. Definitions.**

462 (1) (a) "Absent" means:

463 (i) not physically present or not able to be communicated with for 48 hours; or

464 (ii) for local government officers, as defined by local ordinances.

465 (b) "Absent" does not include a person who can be communicated with via telephone,  
466 radio, or telecommunications.

467 (2) "Attack" means a nuclear, conventional, biological, or chemical warfare action against  
468 the United States of America or this state.

469 (3) "Department" means the Department of Administrative Services, the Department of  
470 Agriculture and Food, the Alcoholic Beverage Control Commission, the Department of  
471 Commerce, the Department of Community and Economic Development, the Department of  
472 Corrections, the Department of Environmental Quality, the Department of Financial Institutions,  
473 the Department of Health, the Department of Human Resource Management, the Department of  
474 Workforce Services, the Labor Commission, the National Guard, the Department of Insurance, the  
475 Department of Natural Resources, the Department of Public Safety, the Public Service  
476 Commission, the Department of Human Services, the State Tax Commission, the Department of  
477 Transportation, any other major administrative subdivisions of state government, the State Board  
478 of Education, the State Board of Regents, the Utah Housing Finance Agency, [~~the Utah~~  
479 ~~Technology Finance Corporation,~~] the Workers' Compensation Fund of Utah, the State Retirement  
480 Board, and each institution of higher education within the system of higher education.

481 (4) "Disaster" means a situation causing, or threatening to cause, widespread damage,  
482 social disruption, or injury or loss of life or property resulting from attack, internal disturbance,  
483 natural phenomenon, or technological hazard.

484 (5) "Division" means the Comprehensive Emergency Management Division established  
485 in Title 53, Chapter 2, Comprehensive Emergency Management Act.

486 (6) "Emergency interim successor" means a person designated by this chapter to exercise  
487 the powers and discharge the duties of an office when the person legally exercising the powers and  
488 duties of the office is unavailable.

489 (7) "Executive director" means the person with ultimate responsibility for managing and  
490 overseeing the operations of each department, however denominated.

491 (8) "Internal disturbance" means a riot, prison break, disruptive terrorism, or strike.

492 (9) "Natural phenomenon" means any earthquake, tornado, storm, flood, landslide,



493 avalanche, forest or range fire, drought, epidemic, or other catastrophic event.

494 (10) (a) "Office" includes all state and local offices, the powers and duties of which are  
495 defined by constitution, statutes, charters, optional plans, ordinances, articles, or by-laws.

496 (b) "Office" does not include the office of governor or the legislative or judicial offices.

497 (11) "Place of governance" means the physical location where the powers of an office are  
498 being exercised.

499 (12) "Political subdivision" includes counties, cities, towns, townships, districts,  
500 authorities, and other public corporations and entities whether organized and existing under charter  
501 or general law.

502 (13) "Political subdivision officer" means a person holding an office in a political  
503 subdivision.

504 (14) "State officer" means the attorney general, the state treasurer, the state auditor, and  
505 the executive director of each department.

506 (15) "Technological hazard" means any hazardous materials accident, mine accident, train  
507 derailment, air crash, radiation incident, pollution, structural fire, or explosion.

508 (16) "Unavailable" means:

509 (a) absent from the place of governance during a disaster that seriously disrupts normal  
510 governmental operations, whether or not that absence or inability would give rise to a vacancy  
511 under existing constitutional or statutory provisions; or

512 (b) as otherwise defined by local ordinance.

513 Section 18. Section **63-38-9.5** is amended to read:

514 **63-38-9.5. Agency exempt from act.**

515 The Utah Housing Finance Agency [~~and the Utah Technology Finance Corporation are~~]  
516 is exempt from this act.

517 Section 19. Section **63-38a-102** is amended to read:

518 **63-38a-102. Definitions.**

519 As used in this chapter:

520 (1) (a) "Agency" means each department, commission, board, council, agency, institution,  
521 officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau,  
522 panel, or other administrative unit of the state.

523 (b) "Agency" does not include the legislative branch, the board of regents, the Utah Higher

524 Education Assistance Authority, the board of trustees of each higher education institution, each  
525 higher education institution and its associated branches, centers, divisions, institutes, foundations,  
526 hospitals, colleges, schools, or departments, a public education entity, or an independent agency.

527 (2) (a) "Dedicated credits revenues" means revenues from collections by an agency that  
528 are deposited directly into an account for expenditure on a separate line item and program.

529 (b) "Dedicated credits" does not mean:

530 (i) federal revenues and the related pass through or the related state match paid by one  
531 agency to another;

532 (ii) revenues that are not deposited in governmental funds;

533 (iii) revenues from any contracts; and

534 (iv) revenues received by the Attorney General's Office from billings for professional  
535 services.

536 (3) "Fees" means revenue collected by an agency for performing a service or providing a  
537 function that the agency deposits or accounts for as dedicated credits or fixed collections.

538 (4) (a) "Fixed collections revenues" means revenue from collections:

539 (i) fixed by law or by the appropriation act at a specific amount; and

540 (ii) required by law to be deposited into a separate line item and program.

541 (b) "Fixed collections" does not mean:

542 (i) federal revenues and the related pass through or the related state match paid by one  
543 agency to another;

544 (ii) revenues that are not deposited in governmental funds;

545 (iii) revenues from any contracts; and

546 (iv) revenues received by the Attorney General's Office from billings for professional  
547 services.

548 (5) (a) "Governmental fund" means funds used to account for the acquisition, use, and  
549 balances of expendable financial resources and related liabilities using a measurement focus that  
550 emphasizes the flow of financial resources.

551 (b) "Governmental fund" does not include internal service funds, enterprise funds, capital  
552 projects funds, debt service funds, or trust and agency funds as established in Section 51-5-4.

553 (6) "Independent agency" means the:

554 (a) Utah State Retirement Office~~[-the]~~;

555 (b) Utah Housing Finance Agency[, the Utah Technology Finance Corporation,]; and [the]

556 (c) Workers' Compensation Fund of Utah.

557 (7) "Program" means the function or service provided by an agency for which the agency  
558 collects fees.

559 (8) "Revenue types" means the categories established by the Division of Finance under the  
560 authority of this chapter that classify revenue according to the purpose for which it is collected.

561 Section 20. Section **63-55-209** is amended to read:

562 **63-55-209. Repeal dates, Title 9.**

563 (1) Title 9, Chapter 1, Part 8, Commission on National and Community Service Act, is  
564 repealed July 1, 1999.

565 (2) Title 9, Chapter 2, Part 3, Small Business Advisory Council, is repealed July 1, 1999.

566 (3) Title 9, Chapter 2, Part 4, Enterprise Zone Act, is repealed July 1, 2008.

567 [~~(4) Title 9, Chapter 2, Part 7, Utah Technology Finance Corporation Act, is repealed July~~  
568 ~~1, 2002.~~]

569 [~~(5)~~ (4) Section 9-2-1208 regarding waste tire recycling loans is repealed July 1, 2000.

570 [~~(6)~~ (5) Title 9, Chapter 2, Part 16, Recycling Market Development Zone Act, is repealed  
571 July 1, 2000, Sections 59-7-608 and 59-10-108.7 are repealed for tax years beginning on or after  
572 January 1, 2001.

573 [~~(7)~~ (6) Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority, is repealed  
574 July 1, 1999.

575 [~~(8)~~ (7) Title 9, Chapter 4, Part 4, Disaster Relief, is repealed July 1, 1999.

576 [~~(9)~~ (8) Title 9, Chapter 4, Part 9, Utah Housing Finance Agency Act, is repealed July 1,  
577 2006.

578 Section 21. Section **63-56-5** is amended to read:

579 **63-56-5. Definitions.**

580 As used in this chapter:

581 (1) "Architect-engineer services" are those professional services within the scope of the  
582 practice of architecture as defined in Section 58-3a-102, or professional engineering as defined in  
583 Section 58-22-102.

584 (2) "Business" means any corporation, partnership, individual, sole proprietorship, joint  
585 stock company, joint venture, or any other private legal entity.

586 (3) "Change order" means a written order signed by the procurement officer, directing the  
587 contractor to suspend work or make changes, which the appropriate clauses of the contract  
588 authorize the procurement officer to order without the consent of the contractor or any written  
589 alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity,  
590 or other provisions of any contract accomplished by mutual action of the parties to the contract.

591 (4) (a) "Construction" means the process of building, renovation, alteration, improvement,  
592 or repair of any public building or public work.

593 (b) "Construction" does not mean the routine operation, routine repair, or routine  
594 maintenance of existing structures, buildings, or real property.

595 (5) (a) "Construction Manager/General Contractor" means any contractor who enters into  
596 a contract for the management of a construction project when that contract allows the contractor  
597 to subcontract for additional labor and materials that were not included in the contractor's cost  
598 proposal submitted at the time of the procurement of the Construction Manager/General  
599 Contractor's services.

600 (b) "Construction Manager/General Contractor" does not mean a contractor whose only  
601 subcontract work not included in the contractor's cost proposal submitted as part of the  
602 procurement of construction is to meet subcontracted portions of change orders approved within  
603 the scope of the project.

604 (6) "Contract" means any state agreement for the procurement or disposal of supplies,  
605 services, or construction.

606 (7) "Cooperative purchasing" means procurement conducted by, or on behalf of, more than  
607 one public procurement unit, or by a public procurement unit with an external procurement unit.

608 (8) "Cost-reimbursement contract" means a contract under which a contractor is  
609 reimbursed for costs which are allowed and allocated in accordance with the contract terms and  
610 the provisions of this chapter, and a fee, if any.

611 (9) (a) "Design-build" means the procurement of architect-engineer services and  
612 construction by the use of a single contract with the design-build provider.

613 (b) This method of design and construction can include the design-build provider  
614 supplying the site as part of the contract.

615 (10) "Established catalogue price" means the price included in a catalogue, price list,  
616 schedule, or other form that:

617 (a) is regularly maintained by a manufacturer or contractor;

618 (b) is either published or otherwise available for inspection by customers; and

619 (c) states prices at which sales are currently or were last made to a significant number of  
620 any category of buyers or buyers constituting the general buying public for the supplies or services  
621 involved.

622 (11) "External procurement unit" means any buying organization not located in this state  
623 which, if located in this state, would qualify as a public procurement unit. An agency of the United  
624 States is an external procurement unit.

625 (12) "Grant" means the furnishing by the state or by any other public or private source  
626 assistance, whether financial or otherwise, to any person to support a program authorized by law.  
627 It does not include an award whose primary purpose is to procure an end product, whether in the  
628 form of supplies, services, or construction. A contract resulting from the award is not a grant but  
629 a procurement contract.

630 (13) "Invitation for bids" means all documents, whether attached or incorporated by  
631 reference, utilized for soliciting bids.

632 (14) "Local public procurement unit" means any political subdivision or institution of  
633 higher education of the state or public agency of any subdivision, public authority, educational,  
634 health, or other institution, and to the extent provided by law, any other entity which expends  
635 public funds for the procurement of supplies, services, and construction, but not counties,  
636 municipalities, political subdivisions created by counties or municipalities under the Interlocal  
637 Cooperation Act, the Utah Housing Finance Agency, [~~the Utah Technology Finance Corporation,~~]  
638 or the Legislature and its staff offices. It includes two or more local public procurement units  
639 acting under legislation which authorizes intergovernmental cooperation.

640 (15) "Person" means any business, individual, union, committee, club, other organization,  
641 or group of individuals, not including a state agency or a local public procurement unit.

642 (16) "Policy board" means the procurement policy board created by Section 63-56-6.

643 (17) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference  
644 under the requirements of this chapter.

645 (18) "Procurement" means buying, purchasing, renting, leasing, leasing with an option to  
646 purchase, or otherwise acquiring any supplies, services, or construction. It also includes all  
647 functions that pertain to the obtaining of any supply, service, or construction, including description

648 of requirements, selection, and solicitation of sources, preparation, and award of a contract, and  
649 all phases of contract administration.

650 (19) "Procurement officer" means any person or board duly authorized to enter into and  
651 administer contracts and make written determinations with respect thereto. It also includes an  
652 authorized representative acting within the limits of authority.

653 (20) "Public procurement unit" means either a local public procurement unit or a state  
654 public procurement unit.

655 (21) "Purchase description" means the words used in a solicitation to describe the supplies,  
656 services, or construction to be purchased, and includes specifications attached to or made a part  
657 of the solicitation.

658 (22) "Purchasing agency" means any state agency other than the Division of Purchasing  
659 and General Services that is authorized by this chapter or its implementing regulations, or by  
660 delegation from the chief procurement officer, to enter into contracts.

661 (23) "Request for proposals" means all documents, whether attached or incorporated by  
662 reference, used for soliciting proposals.

663 (24) "Responsible bidder or offeror" means a person who has the capability in all respects  
664 to perform fully the contract requirements and who has the integrity and reliability which will  
665 assure good faith performance.

666 (25) "Responsive bidder" means a person who has submitted a bid which conforms in all  
667 material respects to the invitation for bids.

668 (26) "Services" means the furnishing of labor, time, or effort by a contractor, not involving  
669 the delivery of a specific end product other than reports which are merely incidental to the required  
670 performance. It does not include employment agreements or collective bargaining agreements.

671 (27) "Specification" means any description of the physical or functional characteristics,  
672 or of the nature of a supply, service, or construction item. It may include a description of any  
673 requirement for inspecting, testing, or preparing a supply, service, or construction item for  
674 delivery.

675 (28) "State agency" means any department, division, commission, council, board, bureau,  
676 committee, institution, government corporation, or other establishment or official of this state.

677 (29) "State public procurement unit" means the Division of Purchasing and General  
678 Services and any other purchasing agency of this state.

679 (30) "Supplies" means all property, including equipment, materials, and printing.

680 (31) "Using agency" means any state agency which utilizes any supplies, services, or  
681 construction procured under this chapter.

682 Section 22. Section **63-95-102** is amended to read:

683 **63-95-102. Definitions.**

684 For purposes of this chapter:

685 (1) "Asset" means property of all kind, real and personal, tangible and intangible, and  
686 includes:

687 (a) cash, except reasonable compensation or salary for services rendered;

688 (b) stock or other investments;

689 (c) goodwill;

690 (d) real property;

691 (e) an ownership interest;

692 (f) a license;

693 (g) a cause of action; and

694 (h) any similar property.

695 (2) "Authorizing statutes" means the statutes creating an entity as a quasi-governmental  
696 entity.

697 (3) "Business interest" means:

698 (a) holding the position of trustee, director, officer, or other similar position with a  
699 business entity; or

700 (b) the ownership, either legally or equitably, of at least 10% of the outstanding shares of  
701 a corporation or 10% interest in any other business entity, being held by:

702 (i) an individual;

703 (ii) the individual's spouse;

704 (iii) a minor child of the individual; or

705 (iv) any combination of Subsection (3)(b)(i) through (iii).

706 (4) "Interested party" means a person that held or holds the position of trustee, director,  
707 officer, or other similar position with a quasi-governmental entity within:

708 (a) five years prior to the date of an action described in Subsection (6); or

709 (b) during the privatization of a quasi-governmental entity.

710 (5) "Lobbyist" is a person that provided or provides services as a lobbyist, as defined in  
711 Section 36-11-102, within:

712 (a) five years prior to the date of an action described in Subsection (6); or

713 (b) during the privatization of a quasi-governmental entity.

714 (6) (a) "Privatized" means an action described in Subsection (6)(b) taken under  
715 circumstances in which the operations of the quasi-governmental entity are continued by a  
716 successor entity that:

717 (i) is privately owned;

718 (ii) is unaffiliated to the state; and

719 (iii) receives any asset of the quasi-governmental entity.

720 (b) An action referred to in Subsection (6)(a) includes:

721 (i) the repeal of the authorizing statute of a quasi-governmental entity and the revision to  
722 state laws to terminate the relationship between the state and the quasi-governmental entity;

723 (ii) the dissolution of the quasi-governmental entity;

724 (iii) the merger or consolidation of the quasi-governmental entity with another entity; or

725 (iv) the sale of all or substantially all of the assets of the quasi-governmental entity.

726 (7) "Quasi-governmental entity" means the:

727 (a) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;

728 [~~(b) Utah Technology Finance Corporation created in Title 9, Chapter 2, Part 7, Utah  
729 Technology Finance Corporation Act;~~

730 [~~(c)~~] (b) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber  
731 Valley Historic Railroad Authority;

732 [~~(d)~~] (c) Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science  
733 Center Authority;

734 [~~(e)~~] (d) Utah Housing Finance Agency created in Title 9, Chapter 4, Part 9, Utah Housing  
735 Finance Agency;

736 [~~(f)~~] (e) Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State Fair  
737 Corporation Act;

738 [~~(g)~~] (f) Workers' Compensation Fund of Utah created in Title 31A, Chapter 33, Workers'  
739 Compensation Fund of Utah;

740 [~~(h)~~] (g) Utah State Retirement Office created in Title 49, Chapter 1, Part 2, Retirement



741 Office and Board;

742           [(i)] (h) School and Institutional Trust Lands Administration created in Title 53C, Chapter  
743 1, Part 2, School and Institutional Trust Lands Administration;

744           [(j)] (i) Crime Victims' Reparations Office created in Title 63, Chapter 25a, Part 4, Crime  
745 Victims' Reparations Act; and

746           [(k)] (j) Utah Communications Agency Network created in Title 63C, Chapter 7, Utah  
747 Communications Agency Network Act.

748           Section 23. Section **63A-1-113** is amended to read:

749           **63A-1-113. Agencies exempt from title.**

750           The Utah Housing Finance Agency [~~and the Utah Technology Finance Corporation are~~]  
751 is exempt from this title.

752           Section 24. **Repealer.**

753           This act repeals:

754           Section **9-2-701, Short title.**

755           Section **9-2-702, Definitions.**

756           Section **9-2-703, Declarations and purpose.**

757           Section **9-2-704, Utah Technology Finance Corporation -- Nonprofit corporation --**

758 **Powers and duties -- Board of trustees -- Appointment of members by governor --**

759 **Rulemaking authority-- Employees -- Legal counsel -- Advisory board -- Expenses.**

760           Section **9-2-705, Criteria governing operations -- Annual report -- Audits.**

761           Section **9-2-706, Exemption from certain statutes.**

762           Section **9-2-707, Confidentiality of information received by corporation -- Availability**  
763 **of information.**

764           Section **9-2-1312, State agency support.**

765           Section 25. **Legislative Intent.**

766           (1) It is the intent of the Legislature that in accordance with this act the Utah Technology  
767 Finance Corporation and its supporting foundation be dissolved as soon as practical but by no later  
768 than January 1, 2000, if no event unforeseen by the Legislature occurs that the Department of  
769 Community and Economic Development determines:

770           (a) prevents dissolution; or

771           (b) makes dissolution not in the best interest of the state.

772 (2) (a) Because at the time of passage of this act the Utah Technology Finance Corporation  
773 administers numerous loans either issued by the corporation or by some other entity, the ongoing  
774 administration of these loans must be addressed as part of any dissolution. Therefore, it is the  
775 intent of the Legislature as provided in this act that either:

776 (i) these loans be administered by the Department of Community and Economic  
777 Development; or

778 (ii) these loans be sold to a private entity.

779 (b) It is not the intent of the Legislature that this act create any new authority in the  
780 Department of Community and Economic Development to issue loans or give economic  
781 development grants.

782 (3) At the time of passage of this act the Utah Technology Finance Corporation has entered  
783 into various contracts, including contracts for the administration of loans issued in whole or in part  
784 by entities other than the corporation. It is not the intent of the Legislature that this act either  
785 creates any new authority or eliminates any existing authority within the Department of  
786 Community and Economic Development to enter into contracts or arrangements including  
787 contracts related to financing activities or economic development in this state.

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**Legislative Review Note****as of 1-5-99 3:31 PM**

This legislation raises the following constitutional or statutory concerns:

This legislation requires the dissolution of Utah Technology Finance Corporation ("UTFC") and its supporting foundation and the transfer of many of their assets to the state. Because these corporations have characteristics of private entities, the required dissolution and the transfer of assets raise constitutional questions such as: whether the legislation constitutes a takings; whether the legislation is improper special legislation; whether the legislation impairs contracts; or whether the legislation violates equal protection or due process.

The forced dissolution of a quasi-governmental entity is rare, and therefore there is little direct precedent to indicate how a court may rule on any constitutional questions raised. However, the legislation is consistent with the Legislature's power to create and set the operating parameters of quasi-governmental entities and with the fact that a primary source of funding of UTFC has been state appropriations. In addition, the process established by the legislation is designed to ensure that the contractual obligations of UTFC and its supporting foundation are not impaired.

**Office of Legislative Research and General Counsel**