

1 **AMENDMENTS TO UTAH TECHNOLOGY**

2 **FINANCE CORPORATION**

3 1999 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: L. Steven Poulton**

6 AN ACT RELATING TO COMMUNITY AND ECONOMIC DEVELOPMENT;
7 RECODIFYING THE UTAH TECHNOLOGY FINANCE CORPORATION ACT; PROVIDING
8 LEGISLATIVE INTENT; PROVIDING DEFINITIONS; ADDRESSING THE CREATION OF
9 THE CORPORATION; ADDRESSING THE MEMBERSHIP OF THE BOARD OF TRUSTEES;
10 PROVIDING FOR OFFICERS AND EMPLOYEES; ADDRESSING POWERS; ADDRESSING
11 CHANGES IN ORGANIZATION; ADDRESSING DUTIES AND LIMITATIONS;
12 ADDRESSING ISSUANCE OF LOANS TO QUALIFIED BUSINESSES; ADDRESSING
13 CONFLICTS OF INTEREST; ADDRESSING CONFIDENTIALITY OF INFORMATION;
14 ADDRESSING LIABILITY OF THE STATE; ADDRESSING HOLDING OF FUNDS BY
15 STATE TREASURER; ADDRESSING ANNUAL REPORTS AND AUDITS; PROVIDING
16 EXEMPTIONS FROM CERTAIN STATUTES; ADDRESSING STANDING OF ATTORNEY
17 GENERAL TO SUE; PROVIDING A TRANSITION CLAUSE; AND MAKING TECHNICAL
18 CHANGES.

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

20 AMENDS:

21 **9-2-1303**, as last amended by Chapter 206, Laws of Utah 1993

22 **11-37-101**, as last amended by Chapter 200, Laws of Utah 1995

23 **51-7-4**, as last amended by Chapter 263, Laws of Utah 1995

24 **63-55-209**, as last amended by Chapter 13, Laws of Utah 1998

25 **63-95-102**, as enacted by Chapter 152, Laws of Utah 1998

26 ENACTS:

27 **9-13-101**, Utah Code Annotated 1953

- 28 **9-13-102**, Utah Code Annotated 1953
- 29 **9-13-103**, Utah Code Annotated 1953
- 30 **9-13-201**, Utah Code Annotated 1953
- 31 **9-13-202**, Utah Code Annotated 1953
- 32 **9-13-203**, Utah Code Annotated 1953
- 33 **9-13-204**, Utah Code Annotated 1953
- 34 **9-13-301**, Utah Code Annotated 1953
- 35 **9-13-302**, Utah Code Annotated 1953
- 36 **9-13-303**, Utah Code Annotated 1953
- 37 **9-13-304**, Utah Code Annotated 1953
- 38 **9-13-305**, Utah Code Annotated 1953
- 39 **9-13-401**, Utah Code Annotated 1953
- 40 **9-13-402**, Utah Code Annotated 1953
- 41 **9-13-403**, Utah Code Annotated 1953
- 42 **9-13-404**, Utah Code Annotated 1953
- 43 **9-13-405**, Utah Code Annotated 1953
- 44 **9-13-406**, Utah Code Annotated 1953

45 REPEALS:

- 46 **9-2-701**, as renumbered and amended by Chapter 241, Laws of Utah 1992
- 47 **9-2-702**, as renumbered and amended by Chapter 241, Laws of Utah 1992
- 48 **9-2-703**, as renumbered and amended by Chapter 241, Laws of Utah 1992
- 49 **9-2-704**, as last amended by Chapter 243, Laws of Utah 1996
- 50 **9-2-705**, as renumbered and amended by Chapter 241, Laws of Utah 1992
- 51 **9-2-706**, as last amended by Chapter 10, Laws of Utah 1997
- 52 **9-2-707**, as last amended by Chapter 4, Laws of Utah 1993

53 This act enacts uncodified material.

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

55 Section 1. Section **9-2-1303** is amended to read:

56 **9-2-1303. Utah Capital Access Fund.**

57 (1) There is created within the office of the state treasurer the Utah Capital Access Fund.

58 The purpose of the fund shall be to encourage lending institutions to make debt capital more

59 readily available to small businesses in Utah of a size that may be eligible for Small Business
60 Administration loans under 13 C.F.R. Sec. 121.1. The fund shall consist of any money
61 appropriated by the Legislature, fees and premiums paid by participating lenders and borrowers,
62 any other money from any other source, public or private, and interest and income earned on these
63 monies.

64 (2) The Utah Technology Finance Corporation created in [~~Part 7 of this chapter~~] Chapter
65 13 shall administer and supervise the fund in all aspects and shall market the availability of the
66 fund to lending institutions and to any business in Utah of a size that may be eligible for Small
67 Business Administration loans under 13 C.F.R. Sec. 121.1.

68 Section 2. Section **9-13-101** is enacted to read:

69 **CHAPTER 13. UTAH TECHNOLOGY AND SMALL BUSINESS FINANCE ACT**

70 **Part 1. General Provisions**

71 **9-13-101. Title.**

72 This chapter is known as the "Utah Technology and Small Business Finance Act."

73 Section 3. Section **9-13-102** is enacted to read:

74 **9-13-102. Legislative findings.**

75 (1) (a) The corporation is created with the primary purpose of supporting the development
76 of qualifying businesses with loans through a revolving loan fund which includes state-provided
77 monies.

78 (b) The corporation is created for this purpose because the Legislature finds that:

79 (i) the growth of small businesses that develop qualifying products and services is
80 necessary to ensure:

81 (A) adequate employment for the state's citizens;

82 (B) growth and vitality of the state's economy; and

83 (C) diversity critical to the health and strength of the economy throughout the state; and

84 (ii) financial resources in this state are not adequate to support small businesses developing
85 qualifying products or services.

86 (2) (a) In addition to the primary purpose described in Subsection (2)(a) and from monies
87 other than state provided monies, the corporation may support the development of small businesses
88 in Utah through:

89 (i) helping small businesses obtain loans, grants, and other forms of assistance from private

90 and other public sources;

91 (ii) administering funds and programs on behalf of other public entities; and

92 (iii) qualifying for grants and loans from public and private entities to be used to provide
93 financing for small businesses with an emphasis on qualifying businesses.

94 (b) The corporation is permitted to engage in the activities described in Subsection (2)(a)
95 because the Legislature finds:

96 (i) (A) funds are available to help finance economic development loan programs;

97 (B) the state may not be eligible to receive the funds described in Subsection (2)(b)(i)(A);

98 and

99 (C) an organization such as an independent public corporation permits the state and its
100 citizens to receive the full benefit from the funds described in Subsection (2)(b)(i)(A); and

101 (ii) (A) many political subdivisions and other public entities qualify for funds for loan
102 programs, but lack the resources and expertise to administer a loan program in the most efficient
103 and cost-effective manner; and

104 (B) the entities described in Subsection (2)(b)(ii)(A) are aided by establishing an
105 independent public corporation that can assist with the administration of those loan programs.

106 (3) By creating the corporation as an independent public corporation:

107 (a) the Legislature intends that the state be protected from potential liability for claims
108 against the corporation; and

109 (b) the corporation can qualify for certain grants, loans, and other forms of assistance from
110 the federal government and other sources for which the state itself is not eligible.

111 Section 4. Section **9-13-103** is enacted to read:

112 **9-13-103. Definitions.**

113 As used in this chapter:

114 (1) "Board" means the board of trustees created by Section 9-13-202.

115 (2) "Business partner" means a person that controls an entity in which a trustee, officer,
116 or employee of the corporation:

117 (a) holds a controlling interest; or

118 (b) serves as director, trustee, officer, or employee.

119 (3) "Corporation" means the Utah Technology Finance Corporation created in Section
120 9-13-201.

- 121 (4) "Proprietary information" means:
122 (a) a trade secret;
123 (b) commercial or financial information that if disclosed may result in an unfair
124 competitive injury to the person submitting the information to the corporation; and
125 (c) information supplied to the corporation if:
126 (i) the person supplying the information requests that it not be disclosed; and
127 (ii) the corporation reasonably determines that the disclosure is not in the public interest.
128 (5) "Qualifying business" means a person determined to be a qualifying business by the
129 corporation in accordance with Section 9-13-303.
130 (6) "Qualifying product" means equipment, goods, software, or other tangible, intangible,
131 or intellectual property:
132 (a) that is primarily designed to perform one or more of the following functions:
133 (i) computing;
134 (ii) telecommunications or other transmission of information;
135 (iii) aerospace or other aeronautical travel, exploration, or research; or
136 (iv) pollution control or other environmental services; or
137 (b) that primarily consists of:
138 (i) a medical product or treatment;
139 (ii) a genetically engineered product; or
140 (iii) a product using new materials or designs that:
141 (A) increases effectiveness, efficiency, or durability; or
142 (B) reduces costs.
143 (7) "Qualifying services" means a service provided through a computer network including
144 the Internet.
145 (8) "Relative" or "relation" means a:
146 (a) direct ancestor or descendent;
147 (b) spouse;
148 (c) sibling; or
149 (d) a direct ancestor, descendent, or sibling of a spouse.
150 (9) "State agency" means a department, commission, board, council, agency, institution,
151 officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau,

152 panel, or other administrative unit of the state.

153 (10) "State-provided monies" means:

154 (a) monies appropriated to the corporation by the Legislature;

155 (b) monies provided to the corporation by a state agency; and

156 (c) any interest earned on the monies described in Subsections (10)(a) and (b).

157 Section 5. Section **9-13-201** is enacted to read:

158 **Part 2. Organization of Corporation**

159 **9-13-201. Utah Technology Finance Corporation -- Nonprofit corporation.**

160 (1) There is created an independent public corporation known as the "Utah Technology
161 Finance Corporation."

162 (2) (a) The corporation shall operate as a nonprofit corporation in accordance with Title
163 16, Chapter 6, Utah Nonprofit Corporation and Cooperative Association Act, to the extent that
164 Title 16, Chapter 6, does not conflict with this chapter.

165 (b) The corporation shall file with the Division of Corporations and Commercial Code:

166 (i) articles of incorporation; and

167 (ii) any amendment to its articles of incorporation.

168 (c) In addition to the articles of incorporation, the corporation may adopt bylaws and
169 operational policies that are consistent with this chapter.

170 Section 6. Section **9-13-202** is enacted to read:

171 **9-13-202. Board of trustees.**

172 (1) (a) The corporation shall be governed by a board of trustees consisting of the following
173 members:

174 (i) the executive director of the Department of Community and Economic Development
175 or the executive director's designee;

176 (ii) the commissioner of the Department of Financial Institutions or the commissioner's
177 designee; and

178 (iii) at least five but not more than nine trustees appointed by the governor with the
179 consent of the Senate.

180 (b) A trustee appointed under Subsection (1)(a)(iii) shall be appointed:

181 (i) for a staggered four-year term; and

182 (ii) from:

183 (A) representatives of the business, banking and finance, venture capital, engineering,
184 scientific, academic, legal, and accounting communities; and

185 (B) the general public.

186 (c) The chief executive officer of the corporation may not be a trustee.

187 (d) (i) If the executive director or the commissioner of the Department of Financial
188 Institutions appoints a designee, the executive director or the commissioner shall notify the
189 corporation in writing of the appointment of the designee prior to the designee serving on the
190 board.

191 (ii) The term of a designee appointed in accordance with Subsection (1)(d)(i) terminates
192 when the designee:

193 (A) resigns;

194 (B) is unable to serve; or

195 (C) is replaced by the executive director or commissioner.

196 (2) (a) A trustee appointed under Subsection (1)(a)(iii) may be removed at any time by the
197 board, by an affirmative vote of not less than two-thirds of all voting members of the board.

198 (b) A person appointed to replace a trustee who does not serve a full term shall serve the
199 remainder of the original term.

200 (c) A trustee appointed under Subsection (1)(a)(iii) shall serve until a successor is
201 appointed by the governor with the consent of the Senate unless the trustee:

202 (i) is removed under Subsection (2)(a); or

203 (ii) is unable to serve on the board.

204 (3) Notwithstanding the requirement of Subsection (1), the governor shall, at the time of
205 appointment or reappointment of a trustee, adjust the length of terms to ensure that the terms of
206 board members are staggered so that approximately half of the board is appointed every two years.

207 (4) Unless the articles of incorporation or bylaws of the corporation or statute requires a
208 higher number of trustees:

209 (a) a majority of the board of trustees constitutes a quorum; and

210 (b) if a quorum is present when a vote is taken, the affirmative vote of a majority of
211 trustees present constitutes an action of the board.

212 (5) (a) (i) A trustee who is not a government employee shall receive no compensation or
213 benefits for serving as a trustee, but may receive per diem and expenses incurred in the

214 performance of the trustee's official duties at the rates established by the Division of Finance under
215 Sections 63A-3-106 and 63A-3-107.

216 (ii) A trustee may decline to receive per diem and expenses.

217 (b) (i) A trustee who is employed by the state or any political subdivision of the state and
218 does not receive salary, per diem, or expenses for serving as a trustee may receive per diem and
219 expenses from the corporation at the rates established by the Division of Finance under Sections
220 63A-3-106 and 63A-3-107.

221 (ii) A state government trustee may decline to receive per diem and expenses.

222 (c) (i) A higher education trustee who does not receive salary, per diem, or expenses from
223 the institution where the trustee is employed for service as a trustee may receive per diem and
224 expenses from the corporation at the rates established by the Division of Finance under Sections
225 63A-3-106 and 63A-3-107.

226 (ii) A higher education trustee may decline to receive per diem and expenses.

227 Section 7. Section **9-13-203** is enacted to read:

228 **9-13-203. Chief executive officer -- Officers and employees -- Independent legal**
229 **counsel.**

230 The board shall:

231 (1) appoint a chief executive officer to administer the corporation under the direction of
232 the board;

233 (2) appoint other officers as necessary;

234 (3) employ necessary staff:

235 (a) within the limitations of the budget; and

236 (b) as the board determines necessary for the conduct of the business of the corporation;

237 (4) determine compensation and other benefits for each officer and employee of the
238 corporation;

239 (5) compensate officers and employees from:

240 (a) the funds of the corporation; or

241 (b) other resources available to the corporation; and

242 (6) hire and retain independent legal counsel.

243 Section 8. Section **9-13-204** is enacted to read:

244 **9-13-204. Change in organizational structure -- Sell of all or substantially all of the**

245 **corporation's assets -- Terminate operations.**

246 (1) Except funds held on behalf of another entity or subject to provisions of a grant or loan
247 requiring return of the funds if the corporation ceases to be a public entity, all funds, property, or
248 other assets of the corporation are public property and may not be disposed of except in
249 compliance with this chapter.

250 (2) (a) The corporation may not be privatized or take any of the actions described in
251 Subsection (2)(b) unless it complies with the process described in Section 63-95-104.

252 (b) Subsection (2)(a) applies to the following actions:

253 (i) changing the corporation's status as an independent public corporation;

254 (ii) granting or conveying all or substantially all of the corporation's funds to any private
255 entity; or

256 (iii) selling, assigning, conveying, hypothecating, pledging, or otherwise transferring
257 control or ownership of all or substantially all of its assets, including all or substantially all of its
258 loan receivables, to any private entity.

259 (3) The Legislature may provide for the dissolution of the corporation and the return of any
260 state-provided monies or state property to the state.

261 Section 9. Section **9-13-301** is enacted to read:

262 **Part 3. Operations of the Corporation**

263 **9-13-301. Powers of the corporation.**

264 (1) Except as limited by this chapter, the Utah Constitution, or any state law applicable to
265 an independent or quasi-independent public entity, the corporation has all the rights, authorities,
266 privileges, and immunities of a nonprofit corporation including:

267 (a) providing from its funds direct loans to qualifying businesses in accordance with
268 Section 9-13-303;

269 (b) compromising claims and entering into work-out or settlement agreements with a
270 borrower, guarantor, or other person;

271 (c) writing-off all or any portion of a loan in default if the corporation determines that:

272 (i) the borrower is not able to repay all or any portion of the loan; or

273 (ii) it is unlikely that collection of all or any portion of the loan can be economically
274 pursued;

275 (d) appointing or seeking appointment of a receiver or conservator of a borrower in

276 default;

277 (e) (i) applying for, soliciting, contracting for, and accepting loans, grants, and other types
278 of funding from federal, state, and other government entities; and

279 (ii) lending the funds described in Subsection (1)(e)(i) in compliance with the terms and
280 conditions of the program through or from which the funds are obtained;

281 (f) applying for, soliciting, contracting for, and agreeing to administer funds and provide
282 other services on behalf of and to federal, state, and other government entities;

283 (g) receiving:

284 (i) appropriations from the Legislature;

285 (ii) other public monies; and

286 (iii) contributions from private or public entities; and

287 (h) seeking federal and state tax exemptions.

288 (2) Notwithstanding Subsections (1)(e) and (f), the corporation may engage in these
289 activities only to the extent that they:

290 (a) are consistent with and do not interfere with the extending of loans to qualified persons
291 under Section 9-13-303;

292 (b) are for the benefit of small businesses as defined by the United States Small Business
293 Administration; and

294 (c) consist of less than 50% of the total amount of loans extended or administered by the
295 corporation.

296 Section 10. Section **9-13-302** is enacted to read:

297 **9-13-302. Limitations.**

298 (1) The corporation, either with state-provided monies or monies from any other source,
299 may provide financial assistance only to a person that has located within Utah:

300 (a) its primary place of business; and

301 (b) its primary business operations.

302 (2) The corporation shall provide assistance to persons so that to the extent possible the
303 corporation benefits all areas of the state.

304 (3) The corporation may not acquire a controlling interest in or exercise control over any
305 other entity.

306 (4) (a) The corporation may not apply for, accept loans or grants from, or administer funds

307 on behalf of, a federal or other public entity if the state or a qualified private entity in Utah has
308 applied for the loan or grant.

309 (b) Notwithstanding Subsection (4)(a), the state or a political subdivision of the state may
310 contract with the corporation to administer a publicly funded program on behalf of the state or
311 political subdivision regardless of the availability or eligibility of private persons to administer the
312 program.

313 Section 11. Section **9-13-303** is enacted to read:

314 **9-13-303. Loans to qualified businesses.**

315 (1) (a) Before extending to a person a loan funded in whole or in part by state-provided
316 monies, the corporation shall determine whether or not that person is a qualified business under
317 Subsection (1)(b).

318 (b) To be a qualified business under this section, a person shall file an application with the
319 corporation that demonstrates to the satisfaction of the corporation that the person:

320 (i) is a small business as defined by the United States Small Business Administration;

321 (ii) is seeking financing to develop or market:

322 (A) a qualifying product or service that is innovative in the marketplace; or

323 (B) an innovation of an existing qualifying product or service;

324 (iii) has located within Utah:

325 (A) its primary place of business; and

326 (B) its primary business operations; and

327 (iv) cannot obtain financing from a private source.

328 (c) For purposes of determining whether a person is a qualified business:

329 (i) the length of time the person has operated as a business is not determinative;

330 (ii) a qualifying product or service can be innovative even if it is offered by more than one
331 person in the marketplace; and

332 (iii) the corporation shall evaluate the person in relation to the economic conditions in the
333 community where the person is or will be based.

334 (2) In determining whether to extend a loan to a qualified business, the corporation shall
335 consider:

336 (a) effects of the activities of the qualified business on the quality of the land, air, water,
337 and general environment of the state; and

- 338 (b) whether the loan to the qualified business is consistent with Subsection 9-13-302(2).
339 (3) The corporation shall collect all loans unless:
340 (a) it is not cost effective to pursue collection efforts; or
341 (b) the corporation decides to write-off all or a portion of the loan as uncollectible.
342 (4) If the corporation extends a loan to a qualified business, the corporation shall enter into
343 a written contract with the qualified business. The written contract shall contain the specific terms
344 and conditions of the loan, including a requirement that the qualified business give the corporation
345 regular reports on the status of the monies loaned to the qualified business.

346 Section 12. Section **9-13-304** is enacted to read:

347 **9-13-304. Conflict of interests.**

348 The corporation may not make a loan, otherwise assist, or contract to purchase goods or
349 services from, any of the following:

350 (1) a trustee, officer, or employee of the corporation, except for salary, benefits,
351 indemnities, and other forms of compensation pertaining to the individual's employment or service
352 for the corporation;

353 (2) an individual who is related to a trustee, officer, or employee of the corporation;

354 (3) an individual who is a business partner of a trustee, officer, or employee of the
355 corporation;

356 (4) an entity in which a trustee, officer, or employee of the corporation:

357 (a) serves as a trustee, director, officer, employee, or representative; or

358 (b) owns or beneficially controls:

359 (i) more than 5% of the voting stock of a corporation; or

360 (ii) if the entity is not a corporation, exercises an interest equivalent to Subsection (4)(b)(i);

361 (5) an entity in which a relative, business partner, or relative of a business partner of a
362 trustee, officer, or employee of the corporation:

363 (a) serves as a trustee, director, officer, employee, or representative; or

364 (b) owns or beneficially controls:

365 (i) more than 5% of the voting stock of a corporation; or

366 (ii) if the entity is not a corporation, exercises an interest equivalent to Subsection (5)(b)(i);

367 (6) a person that has made or has received an application to extend a loan to:

368 (a) a trustee, officer, or employee of the corporation; or

369 (b) a person described in Subsections (1) through (5); or
370 (7) a person where a conflict of interest may reasonably exist affecting any trustee, officer,
371 or employee of the corporation.

372 Section 13. Section **9-13-305** is enacted to read:

373 **9-13-305. Confidentiality of information received by corporation -- Availability of**
374 **information.**

375 (1) Proprietary information obtained by the corporation under this chapter from any person
376 applying for a loan or from a financial, governmental, educational, and other source is protected
377 and not available for public inspection except as provided in Subsection (2).

378 (2) The following records and information are open to the public:

379 (a) an annual report published by the corporation under this chapter;

380 (b) a record that:

381 (i) contains data on an individual; and

382 (ii) is classified as public under Title 63, Chapter 2, Government Records Access and
383 Management Act; and

384 (c) a record that:

385 (i) does not contain data on an individual or proprietary information; and

386 (ii) is open to the public under Title 63, Chapter 2, Government Records Access and
387 Management Act.

388 Section 14. Section **9-13-401** is enacted to read:

389 **Part 4. Relationship to the State**

390 **9-13-401. Liability of state for claims against corporation -- Immunity of corporation.**

391 (1) Notwithstanding Title 63, Chapter 30, Utah Governmental Immunity Act, the following
392 are immune from suit based on, derived from, or otherwise pertaining to any contract, act,
393 omission, obligation, duty, or responsibility of, or any claim, judgment, or penalty against the
394 corporation or any of its trustees, officers, employees, representatives, or agents:

395 (a) a governmental entity, as defined in Subsection 63-30-2(3); or

396 (b) a government employee, as defined in Subsection 63-30-2(2).

397 (2) The corporation, its trustees, officers, employees, agents, and representatives are
398 immune from suit and shall be entitled to indemnification as provided in Title 63, Chapter 30, Utah
399 Governmental Immunity Act.

400 Section 15. Section **9-13-402** is enacted to read:

401 **9-13-402. Monies held by state treasurer -- Limitation on use of state funds.**

402 (1) The corporation shall submit to the custody of the state treasurer:

403 (a) all state-provided monies;

404 (b) public monies; or

405 (c) other monies made available to the corporation from:

406 (i) any governmental agency; or

407 (ii) any person public or private.

408 (2) As necessary, the state treasurer may establish separate funds and accounts for the
409 monies submitted under Subsection (1).

410 (3) (a) The corporation shall use the monies described in Subsection (1) and all interest
411 earned on those funds in accordance with this chapter.

412 (b) Notwithstanding Subsection (3)(a), the corporation may use state-provided monies only
413 to extend loans to qualified persons as provided in Section 9-13-303.

414 Section 16. Section **9-13-403** is enacted to read:

415 **9-13-403. Annual reports.**

416 (1) Following the close of each fiscal year, the corporation shall submit an annual report
417 of its activities for the preceding year to the governor and the Legislature.

418 (2) A report required by Subsection (1) shall include:

419 (a) a complete operating report;

420 (b) an audited financial statement of the corporation during the fiscal year it covers;

421 (c) a statement of loan delinquencies as of the end of the fiscal year; and

422 (d) a statement of net loan write-offs during the fiscal year.

423 Section 17. Section **9-13-404** is enacted to read:

424 **9-13-404. Annual audit.**

425 (1) The state auditor shall at least once in each year:

426 (a) audit the books and accounts of the corporation; or

427 (b) contract with a nationally recognized independent certified public accountant to
428 perform an audit that shall be submitted for review to the state auditor within 90 calendar days
429 after the end of the fiscal year covered by the audit.

430 (2) The corporation shall reimburse the state auditor from available monies of the

431 corporation for the actual and necessary costs of the audit required by Subsection (1).

432 Section 18. Section **9-13-405** is enacted to read:

433 **9-13-405. Exemptions from certain statutes.**

434 The corporation is exempt from:

435 (1) Title 51, Chapter 5, Funds Consolidation Act;

436 (2) Title 51, Chapter 7, State Money Management Act;

437 (3) Title 63, Chapter 38, Budgetary Procedures Act;

438 (4) Title 63A, Chapter 1, Department of Administrative Services; and

439 (5) Title 67, Chapter 19, Utah State Personnel Management Act.

440 Section 19. Section **9-13-406** is enacted to read:

441 **9-13-406. Standing of attorney general to sue.**

442 The attorney general has standing to sue the corporation and its trustees, officers, and
443 employees to enjoin any:

444 (1) violation of the Utah Constitution;

445 (2) any violation of any applicable law of this state or the United States; or

446 (3) breach of any duty or responsibility of a trustee, officer, or employee of the corporation.

447 Section 20. Section **11-37-101** is amended to read:

448 **11-37-101. Definition -- Procurement -- Use of recycled goods.**

449 (1) "Local government entity" means:

450 (a) municipalities, cities, and counties;

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

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

453 (i) Title 11, Chapter 13, Interlocal Cooperation Act;

454 (ii) Title 9, Chapter 4, Part 9, Utah Housing Finance Agency Act; and

455 (iii) Title 9, Chapter [~~2, Part 7~~] 13, Utah Technology and Small Business Finance
456 [~~Corporation~~] Act.

457 (2) The procurement officer or other person responsible for purchasing supplies for each
458 local government entity shall:

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

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

462 Section 21. Section **51-7-4** is amended to read:

463 **51-7-4. Transfer of functions, powers, and duties relating to public funds to state**
464 **treasurer -- Exceptions -- Deposit of income from investment of state money.**

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

471 (a) funds assigned to the Utah State Retirement Board for investment under Section
472 49-1-302;

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

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

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

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

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

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

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

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

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

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

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

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

491 (3) Unless otherwise provided by the constitution or laws of this state or by contractual
492 obligation, the income derived from the investment of state money by the state treasurer shall be

493 deposited in and become part of the General Fund.

494 Section 22. Section **63-55-209** is amended to read:

495 **63-55-209. Repeal dates, Title 9.**

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

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

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

500 (4) Title 9, Chapter [~~2, Part 7~~] 13, Utah Technology Finance [~~Corporation~~] and Small
501 Business Act, is repealed July 1, 2002.

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

503 (6) Title 9, Chapter 2, Part 16, Recycling Market Development Zone Act, is repealed July
504 1, 2000, Sections 59-7-608 and 59-10-108.7 are repealed for tax years beginning on or after
505 January 1, 2001.

506 (7) Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority, is repealed July
507 1, 1999.

508 (8) Title 9, Chapter 4, Part 4, Disaster Relief, is repealed July 1, 1999.

509 (9) Title 9, Chapter 4, Part 9, Utah Housing Finance Agency Act, is repealed July 1, 2006.

510 Section 23. Section **63-95-102** is amended to read:

511 **63-95-102. Definitions.**

512 For purposes of this chapter:

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

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

516 (b) stock or other investments;

517 (c) goodwill;

518 (d) real property;

519 (e) an ownership interest;

520 (f) a license;

521 (g) a cause of action; and

522 (h) any similar property.

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

524 entity.

525 (3) "Business interest" means:

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

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

530 (i) an individual;

531 (ii) the individual's spouse;

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

533 (iv) any combination of [Subsection] Subsections (3)(b)(i) through (iii).

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

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

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

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

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

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

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

545 (i) is privately owned;

546 (ii) is unaffiliated to the state; and

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

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

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

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

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

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

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

- 555 (a) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;
- 556 (b) Utah Technology Finance Corporation created in Title 9, Chapter ~~[2, Part 7]~~ 13, Utah
- 557 Technology and Small Business Finance ~~[Corporation]~~ Act;
- 558 (c) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber Valley
- 559 Historic Railroad Authority;
- 560 (d) Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science
- 561 Center Authority;
- 562 (e) Utah Housing Finance Agency created in Title 9, Chapter 4, Part 9, Utah Housing
- 563 Finance Agency;
- 564 (f) Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State Fair
- 565 Corporation Act;
- 566 (g) Workers' Compensation Fund of Utah created in Title 31A, Chapter 33, Workers'
- 567 Compensation Fund of Utah;
- 568 (h) Utah State Retirement Office created in Title 49, Chapter 1, Part 2, Retirement Office
- 569 and Board;
- 570 (i) School and Institutional Trust Lands Administration created in Title 53C, Chapter 1,
- 571 Part 2, School and Institutional Trust Lands Administration;
- 572 (j) Crime Victims' Reparations Office created in Title 63, Chapter 25a, Part 4, Crime
- 573 Victims' Reparations Act; and
- 574 (k) Utah Communications Agency Network created in Title 63C, Chapter 7, Utah
- 575 Communications Agency Network Act.

576 Section 24. **Repealer.**

577 This act repeals:

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

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

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

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

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

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

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

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

586 Section **9-2-707, Confidentiality of information received by corporation -- Availability**
587 **of information.**

588 Section 25. **Transition Clause.**

589 It is the intent of the Legislature in recodifying Title 9, Chapter 2, Part 7, Utah Technology
590 Finance Corporation Act, that the Utah Technology Finance Corporation continues to operate as
591 an ongoing enterprise and that this act does not impair any existing contractual relationships of the
592 corporation.

Legislative Review Note
as of 2-16-99 3:23 PM

This legislation raises the following constitutional or statutory concerns:

In recodifying the law creating the Utah Technology Finance Corporation ("UTFC"), this bill permits privatization and dissolution, characterizes UTFC's property as public, and prohibits ownership of a controlling interest in other entities. If UTFC were viewed more like a private entity, it is possible that the bill could be challenged as violating constitutional provisions such as due process and impairing contracts. It is unclear whether or not a court might limit the Legislature's authority to take any such actions. 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.

Office of Legislative Research and General Counsel