

**REVISOR'S STATUTE**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Rebecca D. Lockhart**

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**LONG TITLE**

**General Description:**

This bill modifies parts of the Utah Code to make technical corrections including wording, cross references, and numbering changes.

**Highlighted Provisions:**

This bill:

- modifies parts of the Utah Code by making technical corrections including wording, cross referencing, and numbering changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**10-6-151**, as last amended by Chapter 90, Laws of Utah 2004

**11-36-501**, as enacted by Chapter 239, Laws of Utah 2002

**16-10a-1503**, as enacted by Chapter 277, Laws of Utah 1992

**16-10a-1530**, as enacted by Chapter 277, Laws of Utah 1992

**17-37-7**, as last amended by Chapter 95, Laws of Utah 2002

**17-43-201**, as last amended by Chapters 80 and 228, Laws of Utah 2004

**17-43-301**, as last amended by Chapter 80, Laws of Utah 2004

**17A-1-444**, as renumbered and amended by Chapter 186, Laws of Utah 1990

**17A-1-501**, as last amended by Chapter 30, Laws of Utah 1992

**17A-2-325**, as renumbered and amended by Chapter 186, Laws of Utah 1990

**17A-2-1051**, as last amended by Chapter 295, Laws of Utah 2004  
**17A-2-1409**, as last amended by Chapter 20, Laws of Utah 2004  
**17B-2-515.5**, as enacted by Chapter 257, Laws of Utah 2003  
**17B-4-1304**, as enacted by Chapter 133, Laws of Utah 2001  
**20A-3-302**, as last amended by Chapter 195, Laws of Utah 2004  
**20A-9-202**, as last amended by Chapter 146, Laws of Utah 2004  
**26-6b-3**, as last amended by Chapter 21, Laws of Utah 1999  
**31A-22-716**, as last amended by Chapter 108, Laws of Utah 2004  
**32A-12-505**, as last amended by Chapter 314, Laws of Utah 2003  
**34A-2-103**, as last amended by Chapter 116, Laws of Utah 2001  
**34A-2-105**, as last amended by Chapter 9, Laws of Utah 2001  
**35A-3-608**, as renumbered and amended by Chapter 90, Laws of Utah 2003  
**38-1-27.2**, as enacted by Chapter 148, Laws of Utah 2004  
**41-1a-1314**, as last amended by Chapter 48, Laws of Utah 2001  
**48-1-42**, as last amended by Chapter 41, Laws of Utah 1996  
**48-2c-1604**, as enacted by Chapter 260, Laws of Utah 2001  
**48-2c-1612**, as enacted by Chapter 260, Laws of Utah 2001  
**49-12-202**, as last amended by Chapter 330, Laws of Utah 2004  
**49-13-202**, as last amended by Chapter 330, Laws of Utah 2004  
**51-5-4.5**, as last amended by Chapter 159, Laws of Utah 2002  
**51-7-2**, as last amended by Chapter 159, Laws of Utah 2002  
**51-7-4**, as last amended by Chapters 159 and 250, Laws of Utah 2002  
**53-2-107**, as last amended by Chapter 195, Laws of Utah 2000  
**53A-17a-112**, as last amended by Chapter 320, Laws of Utah 2003  
**58-1-307**, as last amended by Chapters 156 and 280, Laws of Utah 2004  
**58-16a-501**, as last amended by Chapter 48, Laws of Utah 2004  
**58-17b-309**, as enacted by Chapter 280, Laws of Utah 2004  
**58-31d-103**, as enacted by Chapter 15, Laws of Utah 2004

**58-42a-102**, as enacted by Chapter 240, Laws of Utah 1994  
**61-6-5**, as last amended by Chapter 106, Laws of Utah 2000  
**62A-3-104.1**, as last amended by Chapter 254, Laws of Utah 1998  
**62A-4a-209**, as last amended by Chapters 265 and 306, Laws of Utah 2002  
**62A-15-108**, as last amended by Chapter 100, Laws of Utah 2003  
**62A-15-110**, as last amended by Chapter 100, Laws of Utah 2003  
**62A-15-713**, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special

Session

**63-2-204**, as last amended by Chapter 280, Laws of Utah 1992  
**63-5b-102**, as last amended by Chapters 14 and 159, Laws of Utah 2002  
**63-34-14**, as enacted by Chapter 179, Laws of Utah 1997  
**63-38-8.1**, as last amended by Chapter 175, Laws of Utah 2001  
**63-38-9.5**, as last amended by Chapter 159, Laws of Utah 2002  
**63-38a-102**, as last amended by Chapter 159, Laws of Utah 2002  
**63-55-263**, as last amended by Chapters 37, 90 and 238, Laws of Utah 2004  
**63-56-5**, as last amended by Chapters 159 and 178, Laws of Utah 2002  
**63A-1-113**, as last amended by Chapter 159, Laws of Utah 2002  
**63A-9-101**, as enacted by Chapter 334, Laws of Utah 1996  
**67-3-1**, as last amended by Chapter 78, Laws of Utah 2003  
**67-5b-104**, as enacted by Chapter 192, Laws of Utah 1994  
**67-5b-106**, as last amended by Chapter 377, Laws of Utah 1997  
**70A-8-101**, as repealed and reenacted by Chapter 204, Laws of Utah 1996  
**75-5a-119**, as enacted by Chapter 272, Laws of Utah 1990  
**77-19-201**, as enacted by Chapter 137, Laws of Utah 2004  
**78-12-33.5**, as enacted by Chapter 208, Laws of Utah 1988

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

Section 1. Section **10-6-151** is amended to read:

**10-6-151. Independent audits required.**

Independent audits of all cities are required, to be performed in conformity with Title 51, Chapter ~~[2, Audits of]~~ 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act. In the case of a city organized under Title 10, Chapter 3, Part 12, Optional Forms of Municipal Government Act, the council shall appoint an independent auditor for the purpose of complying with the requirements of this section and of Title 51, Chapter ~~[2, Audits of]~~ 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.

Section 2. Section **11-36-501** is amended to read:

**11-36-501. Private entity assessment of impact fees -- Notice and hearing -- Audit.**

(1) A private entity may only impose a charge for public facilities as a condition of development approval by imposing an impact fee. A private entity shall comply with the requirements of this chapter before imposing an impact fee.

(2) Except as otherwise specified in this chapter, a private entity is subject to the same requirements of this chapter as a local political subdivision.

(3) Where notice and hearing requirements are specified, a private entity shall comply with the notice and hearing requirements for special districts.

(4) A private entity that assesses an impact fee under this chapter is subject to the audit requirements of Title 51, Chapter ~~[2, Audits of]~~ 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.

Section 3. Section **16-10a-1503** is amended to read:

**16-10a-1503. Application for authority to transact business.**

(1) A foreign corporation may apply for authority to transact business in this state by delivering to the division for filing an application for authority to transact business setting forth:

- (a) its corporate name and its assumed name, if any;
- (b) the name of the state or country under whose law it is incorporated;
- (c) its date of incorporation and period of its corporate duration;
- (d) the street address of its principal office;

(e) the address of its registered office in this state and the name of its registered agent at that office;

(f) the names and usual business addresses of its current directors and officers;

(g) the date it commenced or expects to commence transacting business in this state; and

(h) any additional information the division may determine is necessary or appropriate to determine whether the application for authority to transact business should be filed.

(2) The foreign corporation shall deliver with the completed application for authority to transact business a certificate of existence, or a document of similar import, duly authorized by the [~~secretary of state~~] lieutenant governor or other official having custody of corporate records in the state or country under whose law it is incorporated. The certificate of existence shall be dated within 90 days prior to the filing of the application for authority to transact business by the division.

(3) The foreign corporation shall include in the application for authority to transact business, or in an accompanying document, the written consent to appointment by the designated registered agent.

Section 4. Section **16-10a-1530** is amended to read:

**16-10a-1530. Grounds for revocation.**

The division may commence a proceeding under Section 16-10a-1531 to revoke the authority of a foreign corporation to transact business in this state if:

(1) the foreign corporation does not deliver its annual report to the division when it is due;

(2) the foreign corporation does not pay when they are due any taxes, fees, or penalties imposed by this chapter or other applicable laws of this state;

(3) the foreign corporation is without a registered agent or registered office in this state;

(4) the foreign corporation does not inform the division under Section 16-10a-1509 or 16-10a-1510 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued;

(5) an incorporator, director, officer, or agent of the foreign corporation signs a document

knowing it is false in any material respect with intent that the document be delivered to the division for filing; or

(6) the division receives a duly authenticated certificate from the [~~secretary of state~~] lieutenant governor or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that the corporation has dissolved or disappeared as the result of a merger.

Section 5. Section **17-37-7** is amended to read:

**17-37-7. Annual report -- Financial statement.**

To the extent that independent accounting records are prepared and maintained by the planetarium, the planetarium board of directors shall make, or in the case of a contracting entity, require that there be made, an annual report to the county executive and the county legislative body on the condition and operation of the planetarium, including a financial statement. The financial statement shall be prepared in accordance with generally accepted accounting principles consistently applied and shall be reviewed by the county auditor. The planetarium shall be included in the annual audit of the county conducted by an independent public accountant as required by Title 51, Chapter [~~2, Audits of~~] 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.

Section 6. Section **17-43-201** is amended to read:

**17-43-201. Local substance abuse authorities -- Responsibilities.**

(1) (a) (i) In each county operating under a county executive-council form of government under Section 17-52-504, the county legislative body is the local substance abuse authority, provided however that any contract for plan services shall be administered by the county executive.

(ii) In each county operating under a council-manager form of government under Section 17-52-505, the county manager is the local substance abuse authority.

(iii) In each county other than a county described in Subsection (1)(a)(i) or (ii), the county legislative body is the local substance abuse authority.

(b) Within legislative appropriations and county matching funds required by this section,

and under the policy direction of the board and the administrative direction of the division, each local substance abuse authority shall:

- (i) develop substance abuse prevention and treatment services plans; and
- (ii) provide substance abuse services to residents of the county.

(2) (a) By executing an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, two or more counties may join to provide substance abuse prevention and treatment services.

(b) The legislative bodies of counties joining to provide services may establish acceptable ways of apportioning the cost of substance abuse services.

(c) Each agreement for joint substance abuse services shall:

(i) (A) designate the treasurer of one of the participating counties or another person as the treasurer for the combined substance abuse authorities and as the custodian of moneys available for the joint services; and

(B) provide that the designated treasurer, or other disbursing officer authorized by the treasurer, may make payments from the moneys for the joint services upon audit of the appropriate auditing officer or officers representing the participating counties;

(ii) provide for the appointment of an independent auditor or a county auditor of one of the participating counties as the designated auditing officer for the combined substance abuse authorities;

(iii) (A) provide for the appointment of the county or district attorney of one of the participating counties as the designated legal officer for the combined substance abuse authorities; and

(B) authorize the designated legal officer to request and receive the assistance of the county or district attorneys of the other participating counties in defending or prosecuting actions within their counties relating to the combined substance abuse authorities; and

(iv) provide for the adoption of management, clinical, financial, procurement, personnel, and administrative policies as already established by one of the participating counties or as approved by the legislative body of each participating county or interlocal board.

(d) An agreement for joint substance abuse services may provide for joint operation of services and facilities or for operation of services and facilities under contract by one participating local substance abuse authority for other participating local substance abuse authorities.

(3) (a) Each local substance abuse authority is accountable to the department, the Department of Health, and the state with regard to the use of state and federal funds received from those departments for substance abuse services, regardless of whether the services are provided by a private contract provider.

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

(4) Each local substance abuse authority shall:

(a) review and evaluate substance abuse prevention and treatment needs and services, including substance abuse needs and services for individuals incarcerated in a county jail or other county correctional facility;

(b) annually prepare and submit to the division a plan approved by the county legislative body for funding and service delivery that includes:

(i) provisions for services, either directly by the substance abuse authority or by contract, for adults, youth, and children, including those incarcerated in a county jail or other county correctional facility; and

(ii) primary prevention, targeted prevention, early intervention, and treatment services;

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

(d) appoint directly or by contract a full or part time director for substance abuse

programs, and prescribe the director's duties;

(e) provide input and comment on new and revised policies established by the board;

(f) establish and require contract providers to establish administrative, clinical, procurement, personnel, financial, and management policies regarding substance abuse services and facilities, in accordance with the policies of the board, and state and federal law;

(g) establish mechanisms allowing for direct citizen input;

(h) annually contract with the division to provide substance abuse programs and services in accordance with the provisions of Title 62A, Chapter 15, Substance Abuse and Mental Health Act;

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

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

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

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

(m) for persons convicted of driving under the influence in violation of Subsection 41-6-44(2) or Section 41-6-44.6, conduct the following as defined in Section 41-6-44:

(i) a screening;

(ii) an assessment;

(iii) an educational series; and

(iv) substance abuse treatment; and

(n) utilize proceeds of the accounts described in Subsection 62A-15-503(1) to supplement the cost of providing the services described in Subsection (4)(m).

(5) Before disbursing any public funds, each local substance abuse authority shall require

that each entity that receives any public funds from the local substance abuse authority agrees in writing that:

(a) the entity's financial records and other records relevant to the entity's performance of the services provided to the local substance abuse authority shall be subject to examination by:

(i) the division;

(ii) the local substance abuse authority director;

(iii) (A) the county treasurer and county or district attorney; or

(B) if two or more counties jointly provide substance abuse services under an agreement under Subsection (2), the designated treasurer and the designated legal officer;

(iv) the county legislative body; and

(v) in a county with a county executive that is separate from the county legislative body, the county executive;

(b) the county auditor may examine and audit the entity's financial and other records relevant to the entity's performance of the services provided to the local substance abuse authority; and

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

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

(7) (a) As used in this section, "public funds" means the same as that term is defined in Section 17-43-203.

(b) Public funds received for the provision of services pursuant to the local substance abuse plan may not be used for any other purpose except those authorized in the contract between the local substance abuse authority and the provider for the provision of plan services.

Section 7. Section **17-43-301** is amended to read:

**17-43-301. Local mental health authorities -- Responsibilities.**

(1) (a) (i) In each county operating under a county executive-council form of government under Section 17-52-504, the county legislative body is the local mental health authority,

provided however that any contract for plan services shall be administered by the county executive.

(ii) In each county operating under a council-manager form of government under Section 17-52-505, the county manager is the local mental health authority.

(iii) In each county other than a county described in Subsection (1)(a)(i) or (ii), the county legislative body is the local mental health authority.

(b) Within legislative appropriations and county matching funds required by this section, under the policy direction of the board and the administrative direction of the division, each local mental health authority shall provide mental health services to persons within the county.

(2) (a) By executing an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, two or more counties may join to provide mental health prevention and treatment services.

(b) The legislative bodies of counties joining to provide services may establish acceptable ways of apportioning the cost of mental health services.

(c) Each agreement for joint mental health services shall:

(i) (A) designate the treasurer of one of the participating counties or another person as the treasurer for the combined mental health authorities and as the custodian of moneys available for the joint services; and

(B) provide that the designated treasurer, or other disbursing officer authorized by the treasurer, may make payments from the moneys available for the joint services upon audit of the appropriate auditing officer or officers representing the participating counties;

(ii) provide for the appointment of an independent auditor or a county auditor of one of the participating counties as the designated auditing officer for the combined mental health authorities;

(iii) (A) provide for the appointment of the county or district attorney of one of the participating counties as the designated legal officer for the combined mental health authorities; and

(B) authorize the designated legal officer to request and receive the assistance of the

county or district attorneys of the other participating counties in defending or prosecuting actions within their counties relating to the combined mental health authorities; and

(iv) provide for the adoption of management, clinical, financial, procurement, personnel, and administrative policies as already established by one of the participating counties or as approved by the legislative body of each participating county or interlocal board.

(d) An agreement for joint mental health services may provide for:

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

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

(3) (a) Each local mental health authority is accountable to the department, the Department of Health, and the state with regard to the use of state and federal funds received from those departments for mental health services, regardless of whether the services are provided by a private contract provider.

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

(4) (a) Each local mental health authority shall:

(i) review and evaluate mental health needs and services, including mental health needs and services for persons incarcerated in a county jail or other county correctional facility;

(ii) as provided in Subsection (4)(b), annually prepare and submit to the division a plan approved by the county legislative body for mental health funding and service delivery, either directly by the local mental health authority or by contract;

(iii) establish and maintain, either directly or by contract, programs licensed under Title

62A, Chapter 2, Licensure of Programs and Facilities;

(iv) appoint, directly or by contract, a full-time or part-time director for mental health programs and prescribe the director's duties;

(v) provide input and comment on new and revised policies established by the board;

(vi) establish and require contract providers to establish administrative, clinical, personnel, financial, procurement, and management policies regarding mental health services and facilities, in accordance with the policies of the board and state and federal law;

(vii) establish mechanisms allowing for direct citizen input;

(viii) annually contract with the division to provide mental health programs and services in accordance with the provisions of Title 62A, Chapter 15, Substance Abuse and Mental Health Act;

(ix) comply with all applicable state and federal statutes, policies, audit requirements, contract requirements, and any directives resulting from those audits and contract requirements;

(x) provide funding equal to at least 20% of the state funds that it receives to fund services described in the plan;

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

(xii) take and retain physical custody of minors committed to the physical custody of local mental health authorities by a judicial proceeding under Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(b) Each plan under Subsection (4)(a)(ii) shall include services for adults, youth, and children, which shall include:

(i) inpatient care and services;

(ii) residential care and services;

(iii) outpatient care and services;

(iv) 24-hour crisis care and services;

(v) psychotropic medication management;

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

(vii) case management;

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

(ix) consultation and education services, including case consultation, collaboration with other county service agencies, public education, and public information; and

(x) services to persons incarcerated in a county jail or other county correctional facility.

(5) Before disbursing any public funds, each local mental health authority shall require that each entity that receives any public funds from a local mental health authority agrees in writing that:

(a) the entity's financial records and other records relevant to the entity's performance of the services provided to the mental health authority shall be subject to examination by:

(i) the division;

(ii) the local mental health authority director;

(iii) (A) the county treasurer and county or district attorney; or

(B) if two or more counties jointly provide mental health services under an agreement under Subsection (2), the designated treasurer and the designated legal officer;

(iv) the county legislative body; and

(v) in a county with a county executive that is separate from the county legislative body, the county executive;

(b) the county auditor may examine and audit the entity's financial and other records relevant to the entity's performance of the services provided to the local mental health authority; and

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

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

(7) (a) As used in this section, "public funds" means the same as that term is defined in Section 17-43-303.

(b) Public funds received for the provision of services pursuant to the local mental health plan may not be used for any other purpose except those authorized in the contract between the local mental health authority and the provider for the provision of plan services.

Section 8. Section **17A-1-444** is amended to read:

**17A-1-444. Independent audits required.**

Independent audits of all districts are required to be performed in conformity with Title 51, Chapter [2] 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act. The governing body shall appoint an independent auditor for the purpose of complying with the requirements of this section and with Title 51, Chapter [2] 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.

Section 9. Section **17A-1-501** is amended to read:

**17A-1-501. Definitions.**

As used in this part:

(1) "Audit reports" means the reports of any independent audit of the district performed by:

(a) an independent auditor as required by Title 51, Chapter [2] 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;

(b) the state auditor; or

(c) the legislative auditor.

(2) "Board" means the governing body of any special district.

(3) "Budget" means a plan of financial operations for a fiscal year that includes:

(a) estimates of proposed expenditures for given purposes and the proposed means of financing them;

(b) the source and amount of estimated revenue for the district for the fiscal year;

(c) fund balance in each fund at the beginning of the fiscal year and the projected fund

balance for each fund at the end of the fiscal year; and

(d) capital projects or budgets for proposed construction or improvement to capital facilities within the district.

(4) "Constituent entity" means any county, city, or town that levies property taxes within the boundaries of the district.

(5) (a) "Customer agencies" means those governmental entities, except school districts, institutions of higher education, and federal government agencies that purchase or obtain services from the special district.

(b) "Customer agencies" for purposes of state agencies means the state auditor.

(6) "Independent special district" means any special district established under authority of Title 17A, Chapter 2.

Section 10. Section **17A-2-325** is amended to read:

**17A-2-325. Creation of districts authorized.**

Improvement districts may be created within this state under authority of Chapter 24, Laws of Utah, 1949, as amended by this session of the Legislature, despite the fact that all or any part of any district thereby created lies within the boundaries of a water [~~conservance~~] conservancy district theretofore or thereafter created under authority of [~~Chapter 2,~~] Part 14, Water Conservancy Districts.

Section 11. Section **17A-2-1051** is amended to read:

**17A-2-1051. Members of board subject to recall.**

(1) (a) A member of the board of trustees of a district is subject to recall at any time by the governing body of the municipality, county, or unincorporated county area from which the member is appointed.

(b) A recall of a member of the board of trustees shall be made in the same manner as original appointment.

(c) The appointing entities shall provide written notice to the member of the board of trustees being recalled.

(2) Upon written notice to the board, a member may resign the board member's position

as trustee.

(3) If a member of the board is recalled or resigns under this section, the vacancy shall be filled in accordance with Subsection 17A-2-1038[~~(7)~~](5).

Section 12. Section **17A-2-1409** is amended to read:

**17A-2-1409. Board of trustees -- Selection of members -- Number -- Qualifications -- Terms -- Vacancies -- Surety bonds -- Meetings -- Reports.**

(1) (a) Within 45 days after entry of the decree incorporating the district, the board of trustees shall be selected as provided in this Subsection (1).

(b) For a district that consists of a single county, the county legislative body of that county shall appoint each trustee.

(c) (i) For a district that consists of more than a single county, the governor, with the consent of the Senate, shall appoint each trustee from nominees submitted as provided in this Subsection (1)(c).

(ii) (A) Except as provided in Subsection (1)(c)(ii)(B), in a division composed solely of incorporated cities, the legislative body of each city within the division shall submit two nominees per trustee.

(B) Notwithstanding Subsection (1)(c)(ii)(A), the legislative body of a city may submit fewer than two nominees per trustee if the legislative body certifies in writing to the governor that the legislative body is unable, after reasonably diligent effort, to identify two nominees who are willing and qualified to serve as trustee.

(iii) (A) Except as provided in Subsection (1)(c)(iii)(B), in all other divisions, the county legislative body of the county in which the division is located shall submit three nominees per trustee.

(B) Notwithstanding Subsection (1)(c)(iii)(A), the county legislative body may submit fewer than three nominees per trustee if the county legislative body certifies in writing to the governor that the county legislative body is unable, after reasonably diligent effort, to identify three nominees who are willing and qualified to serve as trustee.

(iv) If a trustee represents a division located in more than one county, the county

governing bodies of those counties shall collectively compile the list of three nominees.

(v) For purposes of this Subsection (1)(c), a city that is located in more than one county shall be considered to be located in only the county in which more of the city area is located than in any other county.

(d) In districts where substantial water is allocated for irrigated agriculture, one trustee appointed in that district shall be a person who owns irrigation rights and uses those rights as part of that person's livelihood.

(2) (a) The court shall establish the number, representation, and votes of trustees for each district in the decree creating the district. The board of trustees of the district shall consist of not more than 11 persons who are residents of the district. If the district consists of five or more counties, the board of trustees shall consist of not more than 21 persons who are residents of the district.

(b) At least 90 days before expiration of a trustee's term, the secretary of the board shall:

(i) give written notice of vacancies in any office of trustee and of the expiration date of terms of office of trustees to the county legislative body in single county districts and to the nominating entities and the governor in all other districts; and

(ii) publish the notice in a newspaper having general circulation.

(c) (i) Upon receipt of the notice of the expiration of a trustee's term or notice of a vacancy in the office of trustee, the legislative body of the city or the county legislative body, as the case may be, shall nominate candidates to fill the unexpired term of office pursuant to Subsection (1).

(ii) If the entity charged with nominating candidates for appointment by the governor has not submitted the list of nominees within 90 days after service of the notice, the governor shall make the appointment from qualified candidates without consultation with the legislative body of the city or the county legislative body.

(iii) If the governor fails to appoint, the incumbent shall continue to serve until a successor is appointed and qualified.

(iv) Appointment by the governor vests in the appointee, upon qualification, the authority

to discharge the duties of trustee, subject only to the consent of the Senate.

(d) Each trustee shall hold office during the term for which appointed and until a successor is duly appointed and has qualified.

(3) Each trustee shall furnish a corporate surety bond at the expense of the district, in amount and form fixed and approved by the court, conditioned for the faithful performance of duties as a trustee.

(4) (a) A report of the business transacted during the preceding year by the district, including a financial report prepared by certified public accountants, shall be filed with:

- (i) the clerk of the district court;
- (ii) the governing bodies of counties with lands within the district; and
- (iii) cities charged with nominating trustees.

(b) No more than 14 days and no less than five days prior to the annual meeting, the district shall have published at least once in a newspaper having general circulation within the district:

- (i) a notice of the annual meeting; and
- (ii) the names of the trustees.

(c) The district shall have published a summary of its financial report in a newspaper having general circulation within the district. The summary shall be published no later than 30 days after the date the audit report required under Title 51, Chapter ~~[2, Audits of]~~ 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, is required to be filed with the state auditor.

(d) Subsections (4)(b) and (c) do not apply to districts with annual revenues of less than \$1,000,000.

Section 13. Section **17B-2-515.5** is amended to read:

**17B-2-515.5. Automatic annexation to a district providing fire protection, paramedic, and emergency services.**

(1) An area outside the boundaries of a local district that is annexed to a municipality or added to a municipality by a boundary adjustment under Title 10, Chapter 2, Part 4, Annexation,

is automatically annexed to the local district if:

- (a) the local district provides fire protection, paramedic, and emergency services;
- (b) an election for the creation of the local district was not required because of

Subsection 17B-2-214(3)(c); and

(c) before the municipal annexation or boundary adjustment, the entire municipality that is annexing the area or adding the area by boundary adjustment was included within the local district.

(2) The effective date of an annexation under this section is governed by Subsection 17B-2-514[(2)(b)(iv)](3)(b).

Section 14. Section **17B-4-1304** is amended to read:

**17B-4-1304. Audit requirements.**

Each agency shall comply with the audit requirements of Title 51, Chapter ~~2, Audits of~~ 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.

Section 15. Section **20A-3-302** is amended to read:

**20A-3-302. Absentee voting -- No polling place for remote districts.**

(1) Whenever, on the 60th day before an election, there are 500 or ~~less~~ fewer persons registered to vote in a voting precinct, the county legislative body of the county in which the voting precinct is located may elect to administer an election entirely by absentee ballot.

(2) If the county legislative body of the county in which the voting precinct is located decides to administer an election entirely by absentee ballot, the county clerk shall mail to each registered voter within that voting precinct:

- (a) an absentee ballot;
- (b) a statement that there will be no polling place for the election;
- (c) instructions for returning the ballot that include an express notice about any relevant deadlines that the voter must meet in order for his vote to be counted; and

(d) a warning, on a separate page of colored paper in bold face print, indicating that if the voter fails to follow the instructions included with the absentee ballot, he will be unable to vote

in that election because there will be no polling place in the voting precinct on the day of the election.

(3) Any voter who votes by absentee ballot under this subsection is not required to apply for an absentee ballot as required by this part.

(4) (a) The county clerk of a county that administers an election entirely by absentee ballot shall:

(i) obtain, in person, the signatures of each voter within that voting precinct before the election; and

(ii) maintain the signatures on file in the county clerk's office.

(b) (i) Upon receiving the returned absentee ballots, the county clerk shall compare the signature on each absentee ballot with the voter's signature that is maintained on file and verify that the signatures are the same.

(ii) If the county clerk questions the authenticity of the signature on the absentee ballot, the clerk shall immediately contact the voter to verify the signature.

(iii) If the voter does not confirm his signature on the absentee ballot, the county clerk shall:

(A) immediately send another absentee ballot and other voting materials as required by this subsection to the voter; and

(B) disqualify the initial absentee ballot.

Section 16. Section **20A-9-202** is amended to read:

**20A-9-202. Declarations of candidacy for regular general elections -- Requirements for candidates.**

(1) (a) Each person seeking to become a candidate for elective office for any county office that is to be filled at the next regular general election shall:

(i) file a declaration of candidacy in person with the county clerk [~~between the~~] on or after March 7 and before 5 p.m. on the March 17 before the next regular general election; and

(ii) pay the filing fee.

(b) Each person intending to become a candidate for any legislative office or multicounty

office that is to be filled at the next regular general election shall:

(i) file a declaration of candidacy in person with either the lieutenant governor or the county clerk in the candidate's county of residence [~~between the~~] on or after March 7 and before 5 p.m. on the March 17 before the next regular general election; and

(ii) pay the filing fee.

(c) (i) Each county clerk who receives a declaration of candidacy from a candidate for multicounty office shall transmit the filing fee and a copy of the candidate's declaration of candidacy to the lieutenant governor within one working day after it is filed.

(ii) Each day during the filing period, each county clerk shall notify the lieutenant governor electronically or by telephone of legislative candidates who have filed in their office.

(d) Each person seeking to become a candidate for elective office for any federal office or constitutional office that is to be filled at the next regular general election shall:

(i) file a declaration of candidacy in person with the lieutenant governor [~~between the~~] on or after March 7 and before 5 p.m. on the March 17 before the next regular general election; and

(ii) pay the filing fee.

(e) Each person seeking the office of lieutenant governor, the office of district attorney, or the office of President or Vice President of the United States shall comply with the specific declaration of candidacy requirements established by this section.

(2) (a) Each person intending to become a candidate for the office of district attorney within a multicounty prosecution district that is to be filled at the next regular general election shall:

(i) file a declaration of candidacy with the clerk designated in the interlocal agreement creating the prosecution district [~~between the~~] on or after March 7 and before 5 p.m. on the March 17 before the next regular general election; and

(ii) pay the filing fee.

(b) The designated clerk shall provide to the county clerk of each county in the prosecution district a certified copy of each declaration of candidacy filed for the office of district attorney.

(3) (a) Within five working days of nomination, each lieutenant governor candidate shall:

(i) file a declaration of candidacy with the lieutenant governor; and

(ii) pay the filing fee.

(b) (i) Any candidate for lieutenant governor who fails to file within five working days is disqualified.

(ii) If a lieutenant governor is disqualified, another candidate shall be nominated to replace the disqualified candidate.

(4) Each registered political party shall:

(a) certify the names of its candidates for President and Vice President of the United States to the lieutenant governor by September 3; or

(b) provide written authorization for the lieutenant governor to accept the certification of candidates for President and Vice President of the United States from the national office of the registered political party.

(5) (a) A declaration of candidacy filed under this section is valid unless a written objection is filed with the clerk or lieutenant governor within five days after the last day for filing.

(b) If an objection is made, the clerk or lieutenant governor shall:

(i) mail or personally deliver notice of the objection to the affected candidate immediately; and

(ii) decide any objection within 48 hours after it is filed.

(c) If the clerk or lieutenant governor sustains the objection, the candidate may cure the problem by amending the declaration or petition within three days after the objection is sustained or by filing a new declaration within three days after the objection is sustained.

(d) (i) The clerk's or lieutenant governor's decision upon objections to form is final.

(ii) The clerk's or lieutenant governor's decision upon substantive matters is reviewable by a district court if prompt application is made to the court.

(iii) The decision of the district court is final unless the Supreme Court, in the exercise of its discretion, agrees to review the lower court decision.

(6) Any person who filed a declaration of candidacy may withdraw as a candidate by filing a written affidavit with the clerk.

Section 17. Section **26-6b-3** is amended to read:

**26-6b-3. Temporary involuntary treatment, isolation, and quarantine.**

(1) The department, or the local health department having jurisdiction over the location where an individual who is subject to supervision is found, may issue an order for the individual's temporary involuntary treatment, quarantine, or isolation pursuant to Subsection 26-1-30(2), 26A-1-114(1)(b), or Section 26-6-4 upon compliance with the requirements of this section.

(2) An individual who is subject to supervision who willfully fails to voluntarily submit to treatment, quarantine, or isolation as requested by the department or the local health department may be ordered to submit to treatment, quarantine, or isolation upon:

(a) written affidavit of the department or the local health department stating:

(i) a belief that the individual who is subject to supervision is likely to fail to submit to treatment, quarantine, or isolation if not immediately restrained;

(ii) this failure would pose a threat to the public health; and

(iii) the personal knowledge of the individual's condition or the circumstances that lead to that belief; and

(b) a written statement by a licensed physician indicating the physician finds the individual is subject to supervision.

(3) A temporary order issued under Subsection (1) may:

(a) be made by the department or by the local health department;

(b) order the individual to submit to reasonable involuntary treatment, quarantine, and isolation, or any of these; and

(c) not require an individual to be subject to [~~involuntarily~~] involuntary quarantine, isolation, or treatment for more than five days, excluding Saturdays, Sundays, and legal holidays, unless a petition has been filed with the district court pursuant to Section 26-6b-5.

(4) (a) Pending issuance of an examination order pursuant to Section 26-6b-5 or an order

for involuntary quarantine, isolation, or treatment from a district court pursuant to Section 26-6b-6, the individual who is the subject of the temporary order may be required to submit to involuntary quarantine, isolation, or treatment in his home, a hospital, or any other suitable facility under reasonable conditions prescribed by the department or the local health department.

(b) The department or the local health department, whichever initially ordered the quarantine, isolation, or treatment, shall take reasonable measures, including the provision of medical care, as may be necessary to assure proper care related to the reason for the involuntary treatment, isolation, or quarantine of an individual ordered to submit to involuntary treatment, isolation, or quarantine.

(5) The individual who is subject to supervision shall be served a copy of the temporary order, together with the affidavit and the physician's written statement, upon being taken into custody. A copy shall also be maintained at the place of quarantine, isolation, or treatment.

Section 18. Section **31A-22-716** is amended to read:

**31A-22-716. Required provision for notice of termination.**

(1) Every policy for group or blanket accident and health coverage issued or renewed after July 1, 1990, shall include a provision that obligates the policyholder to give 30 days prior written notice of termination to each employee or group member and to notify each employee or group member of his rights to continue coverage upon termination.

(2) An insurer's monthly notice to the policyholder of premium payments due shall include a statement of the policyholder's obligations as set forth in Subsection (1). Insurers shall provide a sample notice to the policyholder at least once a year.

(3) For the purpose of compliance with federal law and the Health Insurance Portability and Accountability Act, P.L. No. 104-191, 110 Stat. 1960, all health benefit plans, health insurers, and student health plans must provide a certificate of creditable coverage to each covered person upon ~~their~~ the person's termination from the plan as soon as reasonably possible.

Section 19. Section **32A-12-505** is amended to read:

**32A-12-505. Lawful transportation.**

Nothing contained in [~~Sections 32A-12-503 and~~ Section 32A-12-504 prohibits any carrier from:

- (1) transporting alcoholic products in the course of export from the state; or
- (2) transporting alcoholic products across any part of this state while in transit pursuant to a bona fide consignment of the alcoholic products to a person outside of this state.

Section 20. Section **34A-2-103** is amended to read:

**34A-2-103. Employers enumerated and defined -- Regularly employed -- Statutory employers.**

(1) (a) The state, and each county, city, town, and school district in the state are considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.

(b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah Occupational Disease Act prescribed in Sections 34A-2-105 and 34A-3-102, the state is considered to be a single employer and includes any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

(2) Except as provided in Subsection (4), each person, including each public utility and each independent contractor, who regularly employs one or more workers or operatives in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act. As used in this Subsection (2):

(a) "Independent contractor" means any person engaged in the performance of any work for another who, while so engaged, is:

- (i) independent of the employer in all that pertains to the execution of the work;
- (ii) not subject to the routine rule or control of the employer;
- (iii) engaged only in the performance of a definite job or piece of work; and
- (iv) subordinate to the employer only in effecting a result in accordance with the employer's design.

(b) "Regularly" includes all employments in the usual course of the trade, business, profession, or occupation of the employer, whether continuous throughout the year or for only a

portion of the year.

(3) (a) The client company in an employee leasing arrangement under Title 58, Chapter 59, Professional Employer Organization [~~Licensing~~] Registration Act, is considered the employer of leased employees and shall secure workers' compensation benefits for them by complying with Subsection 34A-2-201(1) or (2) and commission rules.

(b) Insurance carriers may underwrite workers' compensation secured in accordance with Subsection (3)(a) showing the leasing company as the named insured and each client company as an additional insured by means of individual endorsements.

(c) Endorsements shall be filed with the division as directed by commission rule.

(d) The division shall promptly inform the Division of Occupation and Professional Licensing within the Department of Commerce if the division has reason to believe that an employee leasing company is not in compliance with Subsection 34A-2-201(1) or (2) and commission rules.

(4) A domestic employer who does not employ one employee or more than one employee at least 40 hours per week is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act.

(5) (a) As used in this Subsection (5):

(i) (A) "agricultural employer" means a person who employs agricultural labor as defined in Subsections 35A-4-206(1) and (2) and does not include employment as provided in Subsection 35A-4-206(3); and

(B) notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural employer is a corporation, partnership, or other business entity, "agricultural employer" means an officer, director, or partner of the business entity;

(ii) "employer's immediate family" means:

(A) an agricultural employer's:

(I) spouse;

(II) grandparent;

- (III) parent;
- (IV) sibling;
- (V) child;
- (VI) grandchild;
- (VII) nephew; or
- (VIII) niece;

(B) a spouse of any person provided in Subsection (5)(a)(ii)(A)(II) through (VIII); or

(C) an individual who is similar to those listed in Subsections (5)(a)(ii)(A) or (B) as defined by rules of the commission; and

(iii) "nonimmediate family" means a person who is not a member of the employer's immediate family.

(b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is not considered an employer of a member of the employer's immediate family.

(c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is not considered an employer of a nonimmediate family employee if:

(i) for the previous calendar year the agricultural employer's total annual payroll for all nonimmediate family employees was less than \$8,000; or

(ii) (A) for the previous calendar year the agricultural employer's total annual payroll for all nonimmediate family employees was equal to or greater than \$8,000 but less than \$50,000; and

(B) the agricultural employer maintains insurance that covers job-related injuries of the employer's nonimmediate family employees in at least the following amounts:

(I) \$300,000 liability insurance, as defined in Section 31A-1-301; and

(II) \$5,000 for health care benefits similar to benefits under health care insurance as defined in Section 31A-1-301.

(d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is considered an employer of a nonimmediate family employee if:

(i) for the previous calendar year the agricultural employer's total annual payroll for all nonimmediate family employees is equal to or greater than \$50,000; or

(ii) (A) for the previous year the agricultural employer's total payroll for nonimmediate family employees was equal to or exceeds \$8,000 but is less than \$50,000; and

(B) the agricultural employer fails to maintain the insurance required under Subsection (5)(c)(ii).

(6) An employer of agricultural laborers or domestic servants who is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

(a) this chapter and Chapter 3, Utah Occupational Disease Act; and

(b) the rules of the commission.

(7) (a) If any person who is an employer procures any work to be done wholly or in part for the employer by a contractor over whose work the employer retains supervision or control, and this work is a part or process in the trade or business of the employer, the contractor, all persons employed by the contractor, all subcontractors under the contractor, and all persons employed by any of these subcontractors, are considered employees of the original employer for the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.

(b) Any person who is engaged in constructing, improving, repairing, or remodeling a residence that the person owns or is in the process of acquiring as the person's personal residence may not be considered an employee or employer solely by operation of Subsection (7)(a).

(c) A partner in a partnership or an owner of a sole proprietorship may not be considered an employee under Subsection (7)(a) if the employer who procures work to be done by the partnership or sole proprietorship obtains and relies on either:

(i) a valid certification of the partnership's or sole proprietorship's compliance with Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of workers' compensation benefits pursuant to Section 34A-2-201; or

(ii) if a partnership or sole proprietorship with no employees other than a partner of the partnership or owner of the sole proprietorship, a workers' compensation policy issued by an

insurer pursuant to Subsection 31A-21-104(8) stating that:

(A) the partnership or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and

(B) the partner or owner personally waives the partner's or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership or sole proprietorship.

(d) A director or officer of a corporation may not be considered an employee under Subsection (7)(a) if the director or officer is excluded from coverage under Subsection 34A-2-104(4).

(e) A contractor or subcontractor is not an employee of the employer under Subsection (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains and relies on either:

(i) a valid certification of the contractor's or subcontractor's compliance with Section 34A-2-201; or

(ii) if a partnership, corporation, or sole proprietorship with no employees other than a partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a workers' compensation policy issued by an insurer pursuant to Subsection 31A-21-104(8) stating that:

(A) the partnership, corporation, or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and

(B) the partner, corporate officer, or owner personally waives the partner's, corporate officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership's, corporation's, or sole proprietorship's enterprise under a contract of hire for services.

Section 21. Section **34A-2-105** is amended to read:

**34A-2-105. Exclusive remedy against employer, and officer, agent, or employee of employer -- Employee leasing arrangements.**

(1) The right to recover compensation pursuant to this chapter for injuries sustained by

an employee, whether resulting in death or not, shall be the exclusive remedy against the employer and shall be the exclusive remedy against any officer, agent, or employee of the employer and the liabilities of the employer imposed by this chapter shall be in place of any and all other civil liability whatsoever, at common law or otherwise, to the employee or to the employee's spouse, widow, children, parents, dependents, next of kin, heirs, personal representatives, guardian, or any other person whomsoever, on account of any accident or injury or death, in any way contracted, sustained, aggravated, or incurred by the employee in the course of or because of or arising out of the employee's employment, and no action at law may be maintained against an employer or against any officer, agent, or employee of the employer based upon any accident, injury, or death of an employee. Nothing in this section, however, shall prevent an employee, or the employee's dependents, from filing a claim for compensation in those cases in accordance with Chapter 3, Utah Occupational Disease Act.

(2) The exclusive remedy provisions of this section apply to both the client company and the employee leasing company in an employee leasing arrangement under Title 58, Chapter 59, Professional Employer Organization [~~Licensing~~] Registration Act.

(3) (a) For purposes of this section:

(i) "Temporary employee" means an individual who for temporary work assignment is:

(A) an employee of a temporary staffing company; or

(B) registered by or otherwise associated with a temporary staffing company.

(ii) "Temporary staffing company" means a company that engages in the assignment of individuals as temporary full-time or part-time employees to fill assignments with a finite ending date to another independent entity.

(b) If the temporary staffing company secures the payment of workers' compensation in accordance with Section 34A-2-201 for all temporary employees of the temporary staffing company, the exclusive remedy provisions of this section apply to both the temporary staffing company and the client company and its employees and provide the temporary staffing company the same protection that a client company and its employees has under this section for the acts of any of the temporary staffing company's temporary employees on assignment at the client

company worksite.

Section 22. Section **35A-3-608** is amended to read:

**35A-3-608. Schedule of payments to be paid upon liability -- Establishment --**

**Cancellation.**

(1) At any time, the department may:

(a) consistent with the income, earning capacity, and resources of the obligor, set or reset the level and schedule of payments to be paid upon the liability; and

(b) at any time, cancel the schedule of payments and demand immediate payment in full.

(2) The department may recover an overpayment through deductions from cash assistance or food stamps pursuant to Section [~~35A-1-502~~] 35A-3-603.

Section 23. Section **38-1-27.2** is amended to read:

**38-1-27.2. Notice to subcontractor.**

(1) As used in this section, "project" means a project or improvement for which [~~the original contractor has received~~] a preliminary notice has been filed pursuant to Section [~~38-1-27~~] 38-1-32.

(2) If a subcontractor requests a notice described in this [~~Subsection (2)~~] section, an original contractor shall provide notice:

(a) to the subcontractor who requests the notice described in this [~~Subsection (2)~~] section;

(b) within 14 calendar days after the day on which the subcontractor requests the notice described in this [~~Subsection (2)~~] section; and

(c) informing the subcontractor of each preliminary notice the original contractor has received for the project.

Section 24. Section **41-1a-1314** is amended to read:

**41-1a-1314. Unauthorized control for extended time.**

(1) Except as provided in Subsection (3), it is a class A misdemeanor for a person to exercise unauthorized control over a motor vehicle that is not his own, without the consent of the owner or lawful custodian, and with the intent to temporarily deprive the owner or lawful

custodian of possession of the motor vehicle.

(2) The consent of the owner or legal custodian of a motor vehicle to its control by the actor is not in any case presumed or implied because of the owner's or legal custodian's consent on a previous occasion to the control of the motor vehicle by the same or a different person.

(3) Violation of this section is a third degree felony if:

(a) the person does not return the motor vehicle to the owner or lawful custodian within 24 hours after the exercise of unlawful control; or

(b) regardless of the mental state or conduct of the person committing the offense:

(i) the motor vehicle is damaged in an amount of \$500 or more;

(ii) the motor vehicle is used to commit a felony; or

(iii) the motor vehicle is damaged in any amount to facilitate entry into it or its operation.

(4) It is not a defense to Subsection (3)(a) that someone other than the person, or an agent of the person, returned the motor vehicle within 24 hours.

(5) A violation of this section is a lesser included offense of theft under Section 76-6-404, when the theft is of an operable motor vehicle under Subsection 76-6-412(1)(a)~~(i)~~(ii).

Section 25. Section **48-1-42** is amended to read:

**48-1-42. Registration of limited liability partnerships.**

(1) (a) A partnership shall register with the Division of Corporations and Commercial Code by filing an application or a renewal statement:

(i) to become and to continue as a limited liability partnership; or

(ii) to do business in this state as a foreign limited liability partnership.

(b) The application or renewal statement shall include:

(i) the name of the limited liability partnership;

(ii) the address of its principal office;

(iii) if the principal office of the limited liability partnership is not located in this state, the address of a registered office and the name and address of a registered agent for service of process in this state;

(iv) the number of partners;

(v) a brief statement of the business in which the limited liability partnership engages;

(vi) a brief statement that the partnership is applying for, or seeking to renew its status as a limited liability partnership; and

(vii) if a foreign limited liability partnership, an original certificate of fact or good standing from the office of the ~~secretary of state~~ lieutenant governor or other responsible authority of the state in which the limited liability partnership is formed.

(2) The application or renewal statement required by Subsection (1) shall be executed by a majority in voting interest of the partners or by one or more partners authorized by the partnership to execute an application or renewal statement.

(3) The application or renewal statement shall be accompanied by a filing fee established under Section 63-38-3.2.

(4) The division shall register as a limited liability partnership any partnership that submits a completed application with the required fee.

(5) (a) The registration expires one year after the date an application is filed unless the registration is voluntarily withdrawn by filing with the division a written withdrawal notice executed by a majority in voting interest of the partners or by one or more partners authorized to execute a withdrawal notice.

(b) Registration of a partnership as a limited liability partnership shall be renewed if no earlier than 60 days before the date the registration expires and no later than the date of expiration, the limited liability partnership files with the division a renewal statement.

(c) The division shall renew the registration as a limited liability partnership of any limited liability partnership that timely submits a completed renewal statement with the required fee.

(d) If a renewal statement is timely filed, the registration is effective for one year after the date the registration would have expired but for the filing of the renewal statement.

(6) The status of a partnership as a limited liability partnership is not affected by changes in the information stated in the application or renewal statement which take place after the filing of an application or a renewal statement.

(7) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division may issue rules providing for the form content and submittal of applications for registration or of renewal statements.

Section 26. Section **48-2c-1604** is amended to read:

**48-2c-1604. Application for authority to transact business.**

(1) A foreign company may apply for authority to transact business in this state by delivering to the division for filing an application for authority to transact business setting forth:

- (a) its name and its assumed name, if any;
- (b) the name of the state or country under whose law it is formed or organized;
- (c) the nature of the business or purposes to be conducted or promoted in this state;
- (d) its date of formation or organization and period of its duration;
- (e) the street address of its principal office;
- (f) the address of its registered office in this state and the name of its registered agent at that office;
- (g) the names and street addresses of its current managers, if it is a manager-managed company, or of its members, if it is a member-managed company;
- (h) the date it commenced or expects to commence transacting business in this state; and
- (i) any additional information the division may determine is necessary or appropriate to determine whether the application for authority to transact business should be filed.

(2) The foreign company shall deliver with the completed application for authority to transact business a certificate of existence, or a document of similar import, duly authorized by the [~~secretary of state~~] lieutenant governor or other official having custody of records in the state or country under whose law it is formed or organized. The certificate of existence shall be dated within 90 days prior to the filing of the application for authority to transact business by the division.

(3) The foreign company shall include in the application for authority to transact business, or in an accompanying document, the written consent to appointment by the designated registered agent in this state.

Section 27. Section **48-2c-1612** is amended to read:

**48-2c-1612. Grounds for revocation.**

The division may commence a proceeding under Section 48-2c-1613 to revoke the authority of a foreign company to transact business in this state if:

- (1) the foreign company does not deliver its annual report to the division when it is due;
- (2) the foreign company does not pay when they are due any taxes, fees, or penalties imposed by this chapter or other applicable laws of this state;
- (3) the foreign company is without a registered agent or registered office in this state;
- (4) the foreign company does not inform the division under Section 48-2c-303 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued;
- (5) an organizer, member, manager, or agent of the foreign company signs a document knowing it is false in any material respect with intent that the document be delivered to the division for filing; or
- (6) the division receives a duly authenticated certificate from the ~~[secretary of state]~~ lieutenant governor or other official having custody of limited liability company records in the state or country under whose law the foreign company is formed or organized stating that the foreign company has dissolved or disappeared as the result of a merger.

Section 28. Section **49-12-202** is amended to read:

**49-12-202. Participation of employers -- Limitations -- Exclusions -- Admission requirements -- Exceptions -- Nondiscrimination requirements.**

- (1) (a) Unless excluded under Subsection (2) or (3), an employer is a participating employer and may not withdraw from participation in this system.
  - (b) In addition to their participation in this system, participating employers may provide or participate in public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for their employees.
- (2) An employer not initially admitted or included as a participating employer in this system prior to January 1, 1982, may be excluded from participation in this system if:

(a) the employer elects not to provide or participate in any type of private or public retirement, supplemental or defined contribution plan, either directly or indirectly, for its employees, except for Social Security; or

(b) the employer offers another collectively bargained retirement benefit and has continued to do so on an uninterrupted basis since that date.

(3) An employer that is a charter school sponsored by the State Board of Education or a [local] school district that makes an election of nonparticipation in accordance with Section 53A-1a-512 may be excluded as a participating employer.

(4) An employer who did not become a participating employer in this system prior to July 1, 1986, may not participate in this system.

(5) If a participating employer purchases service credit on behalf of regular full-time employees for service rendered prior to the participating employer's admission to this system, the service credit shall be purchased in a nondiscriminatory manner on behalf of all current and former regular full-time employees who were eligible for service credit at the time service was rendered.

Section 29. Section **49-13-202** is amended to read:

**49-13-202. Participation of employers -- Limitations -- Exclusions -- Admission requirements -- Nondiscrimination requirements.**

(1) (a) Unless excluded under Subsection (2) or (3), an employer is a participating employer and may not withdraw from participation in this system.

(b) In addition to their participation in this system, participating employers may provide or participate in any additional public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for their employees.

(2) An employer not initially admitted or included as a participating employer in this system prior to January 1, 1982, may be excluded from participation in this system if:

(a) the employer elects not to provide or participate in any type of private or public retirement, supplemental or defined contribution plan, either directly or indirectly, for its employees, except for Social Security; or

(b) the employer offers another collectively bargained retirement benefit and has continued to do so on an uninterrupted basis since that date.

(3) An employer that is a charter school sponsored by the State Board of Education or a [local] school district that makes an election of nonparticipation in accordance with Section 53A-1a-512 shall be excluded as a participating employer.

(4) If an employer, except an employer that maintains a collectively bargained plan under Subsection (2)(b), elects at any time to provide or participate in any type of public or private retirement, supplemental or defined contribution plan, either directly or indirectly, except for Social Security, the employer shall be a participating employer in this system.

(5) (a) Any employer may by resolution of its governing body apply for admission to this system.

(b) Upon approval of the board, the employer is a participating employer in this system and is subject to this title.

(6) If a participating employer purchases service credit on behalf of regular full-time employees for service rendered prior to the participating employer's admission to this system, the service credit shall be purchased in a nondiscriminatory manner on behalf of all current and former regular full-time employees who were eligible for service credit at the time service was rendered.

Section 30. Section **51-5-4.5** is amended to read:

**51-5-4.5. Housing Corporation exempt.**

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

Section 31. Section **51-7-2** is amended to read:

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

The following funds are exempt from this chapter:

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

- (2) funds of the Workers' Compensation Fund;
- (3) funds of the Utah State Retirement Board; and
- ~~[(4) funds of the Utah Technology Finance Corporation; and]~~
- ~~[(5)]~~ (4) funds of the Utah Housing Corporation.

Section 32. Section **51-7-4** is amended to read:

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

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

- (a) funds assigned to the Utah State Retirement Board for investment under Section 49-11-302;
- (b) funds of member institutions of the state system of higher education:
  - (i) acquired by gift, devise, or bequest, or by federal or private contract or grant;
  - (ii) derived from student fees or from income from operations of auxiliary enterprises, which fees and income are pledged or otherwise dedicated to the payment of interest and principal of bonds issued by such institutions; and
  - (iii) any other funds which are not included in the institution's work program as approved by the State Board of Regents;
- ~~[(c) funds of the Utah Technology Finance Corporation;]~~
- ~~[(d)]~~ (c) inmate funds as provided in Section 64-13-23 or in Title 64, Chapter 9b, Work Programs for Prisoners;
- ~~[(e)]~~ (d) trust funds established by judicial order;
- ~~[(f)]~~ (e) funds of the Workers' Compensation Fund; and
- ~~[(g)]~~ (f) funds of the Utah Housing Corporation.

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

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

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

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

Section 33. Section **53-2-107** is amended to read:

**53-2-107. Search and Rescue Financial Assistance Program -- Uses -- Rulemaking -- Distribution.**

(1) "Reimbursable expenses," as used in this section, means those reasonable costs incidental to search and rescue activities, not including any salary or overtime paid to any person on a regular or permanent payroll, including permanent part-time employees, of any agency or political subdivision of the state, including:

(a) rental for fixed wing aircraft, helicopters, snowmobiles, boats, and generators;

(b) replacement and upgrade of search and rescue equipment;

(c) training of search and rescue volunteers; and

(d) any other equipment or expenses necessary or appropriate for conducting search and rescue activities.

(2) There is created the Search and Rescue Financial Assistance Program within the division.

(3) (a) The program shall be funded from the following revenue sources:

(i) any voluntary contributions to the state received for search and rescue operations;

(ii) monies received by the state under Section 23-19-42 and Section 41-22-34; and

(iii) appropriations made to the program by the Legislature.

(b) All funding for the program shall be nonlapsing.

(4) The director shall use the monies to reimburse counties for all or a portion of each county's reimbursable expenses for search and rescue operations subject to:

(a) the approval of the Search and Rescue Advisory Board as provided in Section ~~[53-2-104]~~ 53-2-109;

(b) monies available in the program; and

(c) rules made under Subsection (7).

(5) Program monies may not be used to reimburse for any paid personnel costs or paid man hours spent in emergency response and search and rescue related activities.

(6) The Legislature finds that these funds are for a general and statewide public purpose.

(7) The division, with the approval of the Search and Rescue Advisory Board, shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, consistent with this act, establishing:

(a) the costs that qualify as reimbursable expenses;

(b) the procedures of agencies to submit expenses and be reimbursed; and

(c) a formula to govern the distribution of available monies between counties based on:

(i) the total qualifying expenses submitted;

(ii) the number of search and rescue incidents per county population;

(iii) the number of victims that reside outside the county; and

(iv) the number of volunteer hours spent in each county in emergency response and search and rescue related activities per county population.

Section 34. Section **53A-17a-112** is amended to read:

**53A-17a-112. Preschool special education appropriation -- Extended year program appropriation -- Appropriation for special education programs in state institutions.**

(1) (a) Money appropriated to the State Board of Education for the preschool special education program in Section 53A-17a-104 shall be allocated to school districts to provide a free, appropriate public education to preschool students with a disability, ages three through five.

(b) The monies shall be distributed on the basis of a school district's previous year December 1 disabled preschool child count as mandated by federal law.

~~[(3)]~~ (2) Monies appropriated for the extended school year program for the severely disabled in Section 53A-17a-104 shall be limited to students with severe disabilities with education program goals identifying significant regression and recoupment disability as approved by the State Board of Education.

~~[(4)]~~ (3) (a) Monies appropriated in Section 53A-17a-104 for self-contained regular special education programs may not be used to supplement other school programs.

(b) Monies in any of the other restricted line item appropriations may not be reduced more than 2% to be used for purposes other than those specified by the appropriation, unless otherwise provided by law.

~~[(5)]~~ (4) (a) The State Board of Education shall compute preschool funding by a factor of 1.47 times the current December 1 child count of eligible preschool aged three, four, and five-year-olds times the WPU value, limited to 8% growth over the prior year December 1 count.

(b) The board shall develop guidelines to implement the funding formula for preschool special education, and establish prevalence limits for distribution of the monies.

Section 35. Section **58-1-307** is amended to read:

**58-1-307. Exemptions from licensure.**

(1) Except as otherwise provided by statute or rule, the following persons may engage in the practice of their occupation or profession, subject to the stated circumstances and limitations, without being licensed under this title:

(a) a person serving in the armed forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or other federal agencies while engaged in activities regulated under this chapter as a part of employment with that federal agency if the person holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division;

(b) a student engaged in activities constituting the practice of a regulated occupation or profession while in training in a recognized school approved by the division to the extent the activities are supervised by qualified faculty, staff, or designee and the activities are a defined part of the training program;

(c) an individual engaged in an internship, residency, preceptorship, postceptorship, fellowship, apprenticeship, or on-the-job training program approved by the division while under the supervision of qualified persons;

(d) an individual residing in another state and licensed to practice a regulated occupation or profession in that state, who is called in for a consultation by an individual licensed in this state, and the services provided are limited to that consultation;

(e) an individual who is invited by a recognized school, association, society, or other body approved by the division to conduct a lecture, clinic, or demonstration of the practice of a regulated occupation or profession if the individual does not establish a place of business or regularly engage in the practice of the regulated occupation or profession in this state;

(f) an individual licensed under the laws of this state, other than under this title, to practice or engage in an occupation or profession, while engaged in the lawful, professional, and competent practice of that occupation or profession;

(g) an individual licensed in a health care profession in another state who performs that profession while attending to the immediate needs of a patient for a reasonable period during which the patient is being transported from outside of this state, into this state, or through this state;

(h) an individual licensed in another state or country who is in this state temporarily to attend to the needs of an athletic team or group, except that the practitioner may only attend to the needs of the athletic team or group, including all individuals who travel with the team or group in any capacity except as a spectator;

(i) an individual licensed and in good standing in another state, who is in this state:

(i) temporarily, under the invitation and control of a sponsoring entity;

(ii) for a reason associated with a special purpose event, based upon needs that may exceed the ability of this state to address through its licensees, as determined by the division; and

(iii) for a limited period of time not to exceed the duration of that event, together with any necessary preparatory and conclusionary periods;

(j) an individual who:

(i) is certified as an athletic trainer by the National Athletic Trainers Association Board of Certification or another entity approved by the division;

(ii) is employed or officially associated with an educational institution, a professional sports organization, or a bona fide amateur sports organization; and

(iii) only provides athletic training services:

(A) to athletes of the educational institution or sports organization to which the individual is employed or officially associated;

(B) at an official athletic training, practice, or competition site; and

(C) that are within the scope of the individual's certification; and

(k) a law enforcement officer, as defined under Section 53-13-103, who:

(i) is operating a voice stress analyzer in the course of the officer's full-time employment with a federal, state, or local law enforcement agency;

(ii) has completed the manufacturer's training course and is certified by the manufacturer to operate that voice stress analyzer; and

(iii) is operating the voice stress analyzer in accordance with Section 58-64-601, regarding deception detection instruments.

(2) A practitioner temporarily in this state who is exempted from licensure under Subsection (1) shall comply with each requirement of the licensing jurisdiction from which the practitioner derives authority to practice. Violation of any limitation imposed by this section constitutes grounds for removal of exempt status, denial of license, or other disciplinary proceedings.

(3) An individual who is licensed under a specific chapter of this title to practice or engage in an occupation or profession may engage in the lawful, professional, and competent practice of that occupation or profession without additional licensure under other chapters of this title, except as otherwise provided by this title.

(4) Upon the declaration of a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health-related activities, the division in

collaboration with the board may:

(a) suspend the requirements for permanent or temporary licensure of persons who are licensed in another state. Persons exempt under this Subsection (4)(a) shall be exempt from licensure for the duration of the emergency while engaged in the scope of practice for which they are licensed in the other state;

(b) modify, under the circumstances described in this Subsection (4) and Subsection (5), the scope of practice restrictions under this title for persons who are licensed under this title as:

(i) a physician under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act;

(ii) a nurse under Chapter 31b, Nurse Practice Act, or Chapter 31c, Nurse Licensure Compact;

(iii) a certified nurse midwife under Chapter 44a, Nurse Midwife Practice Act;

(iv) a pharmacist, pharmacy technician, or pharmacy intern under Chapter 17b, Pharmacy Practice Act;

(v) a respiratory therapist under Chapter 57, Respiratory Care Practices Act; and

(vi) a dentist and dental hygienist under Chapter 69, Dentist and Dental Hygienist Practice Act;

(c) suspend the requirements for licensure under this title and modify the scope of practice in the circumstances described in this Subsection (4) and Subsection (5) for medical services personnel or paramedics required to be certified under Section 26-8a-302; and

(d) suspend requirements in Subsections 58-17b-620(3) through (6) which require certain prescriptive procedures.

(5) Persons exempt under Subsection (4)(c) and persons operating under modified scope of practice provisions under Subsection (4)(b):

(a) shall be exempt from licensure or subject to modified scope of practice for the duration of the emergency;

(b) must be engaged in the distribution of medicines or medical [~~devises~~] devices in response to the emergency or declaration; and

(c) must be employed by or volunteering for a local or state department of health.

Section 36. Section **58-16a-501** is amended to read:

**58-16a-501. Unlawful conduct.**

"Unlawful conduct" includes, in addition to the definition in Section 58-1-501:

(1) buying, selling, or fraudulently obtaining, any optometry diploma, license, certificate, or registration;

(2) aiding or abetting the buying, selling, or fraudulently obtaining, of any optometry diploma, license, certificate, or registration;

(3) selling or providing contact lenses in a manner inconsistent with Section 58-16a-801 or intentionally altering a prescription unless the person selling or providing the lenses is a licensed optometrist or ophthalmologist; or

(4) representing oneself as or using the title of "optometrist," "optometric physician," "doctor of optometry," or "O.D.," unless currently licensed under this chapter.

Section 37. Section **58-17b-309** is amended to read:

**58-17b-309. Exemptions from licensure.**

(1) In addition to the exemptions from licensure in Section 58-1-307, the following individuals may engage in the acts or practices described in this Subsection (1) without being licensed under this chapter:

(a) a person selling or providing contact lenses in accordance with Section 58-16a-801; and

(b) an individual engaging in the practice of pharmacy technician under the direct personal supervision of a pharmacist while making satisfactory progress in an approved program as defined in division rule.

(2) In accordance with Subsection 58-1-303(1)(a), an individual exempt under Subsection (1)(b) must take all examinations as required by division rule following completion of an approved curriculum of education, within the required time frame. This exemption expires immediately upon notification of a failing score of an examination, and the individual may not continue working as a pharmacy technician even under direct supervision.

Section 38. Section **58-31d-103** is amended to read:

**58-31d-103. Rulemaking authority -- Enabling provisions.**

(1) The division may adopt rules necessary to implement Section 58-31d-102.

(2) As used in Article VIII (1) of the Advanced Practice Registered Nurse Compact, "head of the licensing board" means the executive administrator of the Utah Board of Nursing.

(3) For purposes of the Advanced Practice Registered Nurse Compact, "APRN" as defined in Article II (1) of the compact includes an individual who is licensed to practice under Subsection [~~58-31b-302(2)(d)~~] 58-31b-301(2) as an advanced practice registered nurse.

(4) An APRN practicing in this state under a multistate licensure privilege may only be granted prescriptive authority if that individual can document completion of graduate level course work in the following areas:

- (a) advanced health assessment;
- (b) pharmacotherapeutics; and
- (c) diagnosis and treatment.

(5) (a) An APRN practicing in this state under a multistate privilege who seeks to obtain prescriptive authority must:

- (i) meet all the requirements of Subsection (4) and this Subsection (5); and
- (ii) be placed on a registry with the division.

(b) To be placed on a registry under Subsection (5)(a)(ii), an APRN must:

- (i) submit a form prescribed by the division;
- (ii) pay a fee; and
- (iii) if prescribing a controlled substance:

(A) obtain a controlled substance license as required under Section 58-37-6; and

(B) if prescribing a Schedule II or III controlled substance, have a consultation and referral plan with a physician licensed in Utah as required under Subsection 58-31b-102[~~(16)~~](19)(c)(iii).

Section 39. Section **58-42a-102** is amended to read:

**58-42a-102. Definitions.**

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Assessment" means the use of skilled observation or evaluation by administering and interpreting standardized or nonstandardized tests and measurements to identify areas for occupational therapy services.

(2) "Board" means the Occupational Therapy Board created in Section 58-42a-201.

(3) "Certified occupational therapy assistant" or "COTA" means a person certified as a certified occupational therapy assistant by the [~~American~~] National Board for Certification in Occupational Therapy [~~Certification Board~~].

(4) "Individual treatment plan" includes:

(a) planning and directing specific exercises and programs to improve sensory integration and motor functioning at the level of performance neurologically appropriate for the individual's stage of development;

(b) establishing a program of instruction to teach a patient in skills, behaviors, and attitudes necessary for the patient's independent productive, emotional, and social functioning;

(c) analyzing, selecting, and adapting functional exercises to achieve and maintain the patient's optimal functioning in daily living tasks and to prevent further disability; and

(d) planning and directing specific programs to evaluate and enhance perceptual, motor, and cognitive skills.

(5) "Occupational therapist" or "OT" means a person licensed in the state to practice occupational therapy.

(6) "Occupational therapist registered" or "OTR" means a person certified as an occupational therapist registered by the [~~American~~] National Board for Certification in Occupational Therapy [~~Certification Board~~].

(7) "Occupational therapy" means the use of purposeful activity or occupational therapy interventions to develop or restore the highest possible level of independence of an individual who is limited by a physical injury or illness, a dysfunctional condition, a cognitive impairment, a psychosocial dysfunction, a mental illness, a developmental or learning disability, or an adverse environmental condition.

(8) "Occupational therapy assistant" or "OTA" means a person licensed in the state to practice occupational therapy under the supervision of an occupational therapist as set forth in Section 58-42a-306.

(9) "Occupational therapy services" include:

(a) assessing, treating, educating, or consulting with an individual, family, or other persons;

(b) developing, improving, or restoring an individual's daily living skills, work readiness, work performance, play skills, or leisure capacities, or enhancing an individual's educational performance skills;

(c) developing, improving, or restoring an individual's sensory-motor, oral-motor, perceptual, or neuromuscular functioning, or the individual's range of motion;

(d) developing, improving, or restoring the individual's emotional, motivational, cognitive, or psychosocial components of performance;

(e) assessing the need for and recommending, developing, adapting, designing, or fabricating splints or assistive technology devices for individuals;

(f) training individuals in the use of rehabilitative or assistive technology devices such as selected orthotic or prosthetic devices;

(g) applying physical agent modalities as an adjunct to or in preparation for purposeful activity;

(h) applying the use of ergonomic principles; and

(i) adapting or modifying environments and processes to enhance or promote the functional performance, health, and wellness of individuals.

(10) "Practice of occupational therapy" means rendering or offering to render occupational therapy services to individuals, groups, agencies, organizations, industries, or the public.

(11) "Unprofessional conduct" is as defined in Section 58-42a-501.

Section 40. Section **61-6-5** is amended to read:

**61-6-5. Issuing public corporation defined.**

(1) As used in this chapter, "issuing public corporation" means a corporation, other than a depository institution, that is organized under the laws of this state and that has:

- (a) 100 or more shareholders;
- (b) its principal place of business, its principal office, or substantial assets within the state; and
- (c) (i) more than 10% of its shareholders resident in the state;  
(ii) more than 10% of its shares owned by Utah residents; or  
(iii) 10,000 shareholders resident in the state.

(2) The residence of a shareholder is presumed to be the address appearing in the records of the corporation.

(3) Shares held by banks or other depository institutions (except as trustee or guardian), brokers, or nominees shall be disregarded for purposes of calculating the percentages or numbers described in this section.

(4) As used in this chapter, "depository institution" means a depository institution or a depository institution holding company as defined in Section 7-1-103.

Section 41. Section **62A-3-104.1** is amended to read:

**62A-3-104.1. Powers and duties of area agencies.**

(1) An area agency that provides services to the aged, high risk adults, or both shall within its respective jurisdiction:

(a) advocate by monitoring, evaluating, and providing input on all policies, programs, hearings, and levies that affect those persons;

(b) design and implement a comprehensive and coordinated system of services within a designated planning and service area;

(c) conduct periodic reviews and evaluations of needs and services;

(d) prepare and submit to the division plans for funding and service delivery for services within the designated planning and service area;

(e) establish, either directly or by contract, programs licensed under Chapter 2 [~~of this title~~], Licensure of Programs and Facilities;

(f) appoint an area director, prescribe his duties, and provide adequate and qualified staff to carry out the area plan described in Subsection (1)(d);

(g) establish rules not contrary to policies of the board and rules of the division, regulating local services and facilities;

(h) operate other services and programs funded by sources other than those administered by the division;

(i) establish mechanisms to provide direct citizen input, including an area agency advisory council with a majority of members who are eligible for services from the area agency;

(j) establish fee schedules; and

(k) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal Cooperation Act, and with the requirements and procedures of Title 51, Chapter [2] 2a. Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.

(2) Before disbursing any public funds, an area agency shall require that all entities receiving any public funds agree in writing that:

(a) the division may examine the entity's program and financial records; and

(b) the auditor of the local area agency may examine and audit the entity's program and financial records, if requested by the local area agency.

(3) Local area agencies may receive property, grants, gifts, supplies, materials, including any benefit derived therefrom, and contributions for the purpose of providing services pursuant to this part. If those gifts are conditioned upon their use for a specified service or program, they shall be so used.

(4) (a) Area agencies shall award all public funds in compliance with the requirements of Title 63, Chapter 56, Utah Procurement Code, or with a county procurement ordinance that requires similar procurement procedures.

(b) If all initial bids on a project are rejected, the area agency shall publish a new invitation to bid. If no satisfactory bid is received by the area agency when the bids received from the second invitation are opened, the area agency may execute a contract without requiring

competitive bidding.

(c) An area agency need not comply with the procurement provisions of this section when it disburses public funds to other governmental entities. For purposes of this Subsection (4)(c), "governmental entity" means any political subdivision or institution of higher education of the state.

(d) Contracts awarded by an area agency shall be for a fixed amount and limited period. Contracts may be modified due to changes in available funding for the same contract purpose without competition.

(5) Local area agencies shall comply with all applicable state and federal statutes, policies, audit requirements, and any directives resulting from those audits.

Section 42. Section **62A-4a-209** is amended to read:

**62A-4a-209. Emergency kinship placement.**

(1) The division may use an emergency kinship placement under Subsection 62A-4a-202.1~~[(6)]~~(4)(b)(ii) when:

(a) the case worker has made the determination that:

(i) the child's home is unsafe;

(ii) removal is necessary under the provisions of Section 62A-4a-202.1; and

(iii) the child's custodial parent or guardian will agree to not remove the child from the relative's home who serves as the kinship placement and not have any contact with the child until after the shelter hearing required by Section 78-3a-306;

(b) a relative, with preference being given to a noncustodial parent in accordance with Section 78-3a-307, can be identified who has the ability and is willing to provide care for the child who would otherwise be placed in shelter care, including:

(i) taking the child to medical, mental health, dental, and educational appointments at the request of the division; and

(ii) the relative has the ability to make the child available to division services and the guardian ad litem; and

(c) the relative agrees to care for the child on an emergency basis under the following

conditions:

- (i) the relative meets the criteria for an emergency kinship placement under Subsection (2);
- (ii) the relative agrees to not allow the custodial parent or guardian to have any contact with the child until after the shelter hearing unless authorized by the division in writing;
- (iii) the relative agrees to contact law enforcement and the division if the custodial parent or guardian attempts to make unauthorized contact with the child;
- (iv) the relative agrees to allow the division and the child's guardian ad litem to have access to the child;
- (v) the relative has been informed and understands that the division may continue to search for other possible kinship placements for long-term care, if needed;
- (vi) the relative is willing to assist the custodial parent or guardian in reunification efforts at the request of the division, and to follow all court orders; and
- (vii) the child is comfortable with the relative.

(2) Before the division places a child in an emergency kinship placement, the division must:

- (a) request the name of a reference and when possible, contact the reference and determine the answer to the following questions:
  - (i) would the person identified as a reference place a child in the home of the emergency kinship placement; and
  - (ii) are there any other relatives to consider as a possible emergency or long-term placement for the child;
- (b) have the custodial parent or guardian sign an emergency kinship placement agreement form during the investigation;
- (c) complete a criminal background check described in Sections 62A-4a-202.4 and 78-3a-307.1 on all persons living in the relative's household;
- (d) complete a home inspection of the relative's home; and
- (e) have the emergency kinship placement approved by a family service specialist.

(3) As soon as possible after the emergency placement and prior to the shelter hearing required by Section 78-3a-306, the division shall convene a family unity meeting.

(4) After an emergency kinship placement, the division caseworker must:

(a) respond to the emergency kinship placement's calls within one hour if the custodial parents or guardians attempt to make unauthorized contact with the child or attempt to remove the child;

(b) complete all removal paperwork, including the notice provided to the custodial parents and guardians under Section 78-3a-306;

(c) contact the attorney general to schedule a shelter hearing;

(d) complete the kinship procedures required in Section 78-3a-307, including, within five days after placement, the criminal history record check described in Subsection (5); and

(e) continue to search for other relatives as a possible long-term placement, if needed.

(5) (a) In order to determine the suitability of the kinship placement and to conduct a background screening and investigation of individuals living in the household in which a child is placed, each individual living in the household in which the child is placed who has not lived in the state substantially year round for the most recent five consecutive years ending on the date the investigation is commenced shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the division to the Federal Bureau of Investigation for a national criminal history record check.

(b) The cost of those investigations shall be borne by whomever received placement of the child, except that the division may pay all or part of the cost of those investigations if the person with whom the child is placed is unable to pay.

Section 43. Section **62A-15-108** is amended to read:

**62A-15-108. Formula for allocation of funds to local substance abuse authorities and local mental health authorities.**

(1) The board shall establish, by rule, formulas for allocating funds to local substance abuse authorities and local mental health authorities through contracts, to provide substance abuse prevention and treatment services in accordance with the provisions of this chapter and

Title [17A] 17, Chapter [3] 43, Part [7] 2, Local Substance Abuse Authorities, and mental health services in accordance with the provisions of this chapter and Title [17A] 17, Chapter [3] 43, Part [6] 3, Local Mental Health Authorities. The formulas shall provide for allocation of funds based on need. Determination of need shall be based on population unless the board establishes, by valid and accepted data, that other defined factors are relevant and reliable indicators of need. The formulas shall include a differential to compensate for additional costs of providing services in rural areas.

(2) The formulas established under Subsection (1) apply to all state and federal funds appropriated by the Legislature to the division for local substance abuse authorities and local mental health authorities, but does not apply to:

(a) funds that local substance abuse authorities and local mental health authorities receive from sources other than the division;

(b) funds that local substance abuse authorities and local mental health authorities receive from the division to operate specific programs within their jurisdictions which are available to all residents of the state;

(c) funds that local substance abuse authorities and local mental health authorities receive from the division to meet needs that exist only within their local areas; and

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

Section 44. Section **62A-15-110** is amended to read:

**62A-15-110. Contracts for substance abuse and mental health services -- Provisions -- Responsibilities.**

(1) If the division contracts with a local substance abuse authority or a local mental health authority to provide substance abuse or mental health programs and services in accordance with the [provision] provisions of this chapter and Title [17A] 17, Chapter [3] 43, Part [7] 2, Local Substance Abuse Authorities, or Title [17A] 17, Chapter [3] 43, Part [6] 3, Local Mental Health Authorities, it shall ensure that those contracts include at least the following provisions:

(a) that an independent auditor shall conduct any audit of the local substance abuse

authority or its contract provider's programs or services and any audit of the local mental health authority or its contract provider's programs or services, pursuant to the provisions of Title 51, Chapter [~~2, Audits of~~] 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;

(b) in addition to the requirements described in Title 51, Chapter [~~2, Audits of~~] 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, the division:

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

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

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

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

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

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

(2) Each contract between the division and a local substance abuse authority or a local

mental health authority shall authorize the division to withhold funds, otherwise allocated under Section 62A-15-108, to cover the costs of audits, attorney fees, and other expenditures associated with reviewing the expenditure of public funds by a local substance abuse authority or its contract provider or a local mental health authority or its contract provider, if there has been an audit finding or judicial determination that public funds have been misused by the local substance abuse authority or its contract provider or the local mental health authority or its contract provider.

Section 45. Section **62A-15-713** is amended to read:

**62A-15-713. Contracts with local mental health authorities -- Provisions.**

When the division contracts with a local mental health authority to provide mental health programs and services in accordance with the [~~provision~~] provisions of this chapter and Title [~~17A~~] 17, Chapter [~~3~~] 43, Part [~~6~~] 3, Local Mental Health Authorities, it shall ensure that those contracts include at least the following provisions:

(1) that an independent auditor shall conduct any audit of the local mental health authority or its contract provider's programs or services, pursuant to the provisions of Title 51, Chapter [~~2, Audits of~~] 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;

(2) in addition to the requirements described in Title 51, Chapter [~~2, Audits of~~] 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, the division:

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

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

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

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

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

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

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

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

Section 46. Section **63-2-204** is amended to read:

**63-2-204. Requests -- Time limit for response and extraordinary circumstances.**

(1) A person making a request for a record shall furnish the governmental entity with a written request containing his name, mailing address, daytime telephone number, if available, and a description of the records requested that identifies the record with reasonable specificity.

(2) A governmental entity may make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall be directed.

(3) (a) As soon as reasonably possible, but no later than ten business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person, the governmental entity shall respond to the request by:

- (i) approving the request and providing the record;
- (ii) denying the request;
- (iii) notifying the requester that it does not maintain the record and providing, if known,

the name and address of the governmental entity that does maintain the record; or

(iv) notifying the requester that because of one of the extraordinary circumstances listed in Subsection (4), it cannot immediately approve or deny the request~~[-The]~~; this notice shall describe the circumstances relied upon and specify the date when the records will be available.

(b) Any person who requests a record to obtain information for a story or report for publication or broadcast to the general public is presumed to be acting to benefit the public rather than a person.

(4) The following circumstances constitute "extraordinary circumstances" that allow a governmental entity to delay approval or denial by an additional period of time as specified in Subsection ~~[63-2-204]~~ (5) if the governmental entity determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection (3):

(a) another governmental entity is using the record, in which case the originating governmental entity shall promptly request that the governmental entity currently in possession return the record;

(b) another governmental entity is using the record as part of an audit, and returning the record before the completion of the audit would impair the conduct of the audit;

(c) the request is for a voluminous quantity of records;

(d) the governmental entity is currently processing a large number of records requests;

(e) the request requires the governmental entity to review a large number of records to locate the records requested;

(f) the decision to release a record involves legal issues that require the governmental entity to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case law;

(g) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires extensive editing; or

(h) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires computer programming.

(5) If one of the extraordinary circumstances listed in Subsection (4) precludes approval or denial within the time specified in Subsection (3), the following time limits apply to the

extraordinary circumstances:

(a) for claims under Subsection (4)(a), the governmental entity currently in possession of the record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder's work;

(b) for claims under Subsection (4)(b), the originating governmental entity shall notify the requester when the record is available for inspection and copying;

(c) for claims under Subsections (4)(c), (d), and (e), the governmental entity shall:

(i) disclose the records that it has located which the requester is entitled to inspect;

(ii) provide the requester with an estimate of the amount of time it will take to finish the work required to respond to the request; and

(iii) complete the work and disclose those records that the requester is entitled to inspect as soon as reasonably possible;

(d) for claims under Subsection (4)(f), the governmental entity shall either approve or deny the request within five business days after the response time specified for the original request has expired;

(e) for claims under Subsection (4)(g), the governmental entity shall fulfill the request within 15 business days from the date of the original request; or

(f) for claims under Subsection (4)(h), the governmental entity shall complete its programming and disclose the requested records as soon as reasonably possible.

(6) (a) If a request for access is submitted to an office of a governmental entity other than that specified by rule in accordance with Subsection (2), the office shall promptly forward the request to the appropriate office.

(b) If the request is forwarded promptly, the time limit for response begins when the record is received by the office specified by rule.

(7) If the governmental entity fails to provide the requested records or issue a denial within the specified time period, that failure is considered the equivalent of a determination denying access to the records.

Section 47. Section **63-5b-102** is amended to read:

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

(1) (a) "Absent" means:

- (i) not physically present or not able to be communicated with for 48 hours; or
- (ii) for local government officers, as defined by local ordinances.

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

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

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

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

(5) "Division" means the Division of Emergency Services and Homeland Security established in Title 53, Chapter 2, Emergency [~~Services and Homeland Security Act~~] Management.

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

and duties of the office is unavailable.

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

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

(9) "Natural phenomenon" means any earthquake, tornado, storm, flood, landslide, avalanche, forest or range fire, drought, epidemic, or other catastrophic event.

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

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

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

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

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

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

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

(16) "Unavailable" means:

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

(b) as otherwise defined by local ordinance.

Section 48. Section **63-34-14** is amended to read:

**63-34-14. Species Protection Account.**

(1) As used in this section, "species protection" means an action to protect any plant or

animal species identified as sensitive by the state or as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. [~~16~~] Sec. 1531 et seq.

(2) There is created within the General Fund a restricted account known as the Species Protection Account.

(3) The account shall consist of:

(a) revenue generated by the brine shrimp tax provided for in Title 59, Chapter 23, Brine Shrimp Royalty Act; and

(b) interest earned on monies in the account.

(4) Monies in the account may be appropriated by the Legislature for the following purposes:

(a) to develop and implement species status assessments and species protection measures;

(b) to obtain biological opinions of proposed species protection measures;

(c) to conduct studies, investigations, and research into the effects of proposed species protection measures;

(d) to verify species protection proposals that are not based on valid biological data;

(e) for Great Salt Lake wetlands mitigation projects in connection with the western transportation corridor;

(f) to pay for the state's voluntary contributions to the Utah Reclamation Mitigation and Conservation Account under the Central Utah Project Completion Act, Pub. L. No. 102-575, Titles II-VI, 106 Stat. 4605-4655; and

(g) to pay for expenses of the State Tax Commission under Title 59, Chapter 23, Brine Shrimp Royalty Act.

(5) The purposes specified in Subsections (4)(a) through (4)(d) may be accomplished by the state or, in an appropriation act, the Legislature may authorize the Department of Natural Resources to award grants to political subdivisions of the state to accomplish those purposes.

(6) Monies in the account may not be used to develop or implement a habitat conservation plan required under federal law unless the federal government pays for at least 1/3

of the habitat conservation plan costs.

Section 49. Section **63-38-8.1** is amended to read:

**63-38-8.1. Nonlapsing authority.**

(1) As used in this section:

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

(ii) "Agency" does not include those entities whose unappropriated and unencumbered balances are made nonlapsing by the operation of Subsection 63-38-8(2).

(b) "Appropriation balance" means the unexpended and unencumbered balance of a line item appropriation made by the Legislature to an agency that exists at the end of a fiscal year.

(c) "Nonlapsing" means that an agency's appropriation balance is not closed out to the appropriate fund at the end of a fiscal year as required by Section 63-38-8.

(d) "One-time project" means a project or program that can be completed with the appropriation balance and includes such items as employee incentive awards and bonuses, purchase of equipment, and one-time training.

(e) "One-time [~~project's~~] projects list" means:

(i) a prioritized list of one-time projects, upon which an agency would like to spend any appropriation balance; and

(ii) for each project, the maximum amount the agency is estimating for the project.

(f) "Program" means a service provided by an agency to members of the public, other agencies, or to employees of the agency.

(2) Notwithstanding the requirements of Section 63-38-8, an agency may:

(a) by following the procedures and requirements of this section, retain and expend any appropriation balance; and

(b) comply with the requirements of Subsections 63-9-67(2) and 63-38-18(2).

(3) (a) Each agency that wishes to preserve any part or all of its appropriation balance as nonlapsing shall include a one-time [~~project's~~] projects list as part of the budget request that it

submits to the governor and the Legislature at the annual general session of the Legislature immediately before the end of the fiscal year in which the agency may have an appropriation balance.

(b) An agency may not include a proposed expenditure on its one-time [~~project's~~] projects list if:

- (i) the expenditure creates a new program;
- (ii) the expenditure enhances the level of an existing program; or
- (iii) the expenditure will require a legislative appropriation in the next fiscal year.

(c) The governor:

(i) may approve some or all of the items from an agency's one-time [~~project's~~] projects list; and

(ii) shall identify and prioritize any approved one-time projects in the budget that he submits to the Legislature.

(4) The Legislature:

(a) may approve some or all of the specific items from an agency's one-time [~~project's~~] projects list as authorized expenditures of an agency's appropriation balance;

(b) shall identify any authorized one-time projects in the appropriate line item appropriation; and

(c) may prioritize one-time projects in intent language.

Section 50. Section **63-38-9.5** is amended to read:

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

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

Section 51. Section **63-38a-102** is amended to read:

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

As used in this chapter:

(1) (a) "Agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,

unit, bureau, panel, or other administrative unit of the state.

(b) "Agency" does not include the legislative branch, the board of regents, the Utah Higher Education Assistance Authority, the board of trustees of each higher education institution, each higher education institution and its associated branches, centers, divisions, institutes, foundations, hospitals, colleges, schools, or departments, a public education entity, or an independent agency.

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

(b) "Dedicated credits" does not mean:

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

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

(iii) revenues from any contracts; and

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

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

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

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

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

(b) "Fixed collections" does not mean:

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

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

(iii) revenues from any contracts; and

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

(5) (a) "Governmental fund" means funds used to account for the acquisition, use, and

balances of expendable financial resources and related liabilities using a measurement focus that emphasizes the flow of financial resources.

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

(6) "Independent agency" means the Utah State Retirement Office, the Utah Housing Corporation, [~~the Utah Technology Finance Corporation,~~] and the Workers' Compensation Fund.

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

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

Section 52. Section **63-55-263** is amended to read:

**63-55-263. Repeal dates, Titles 63 to 63E.**

(1) Title 63, Chapter 25a, Part 3, Sentencing Commission, is repealed January 1, 2012.

(2) The Crime Victims' Reparations Board, created in Section 63-25a-404, is repealed July 1, 2007.

~~[(4)]~~ (3) Title 63, Chapter 38c, State Appropriations and Tax Limitation Act, is repealed July 1, 2005.

~~[(3)]~~ (4) The Resource Development Coordinating Committee, created in Section 63-38d-501, is repealed July 1, 2005.

(5) Title 63, Chapter 47, Utah Commission for Women and Families, is repealed July 1, 2005.

(6) Title 63, Chapter 75, Families, Agencies, and Communities Together for Children and Youth At Risk Act, is repealed July 1, 2006.

(7) Title 63, Chapter 88, Navajo Trust Fund, is repealed July 1, 2005.

(8) Sections 63A-4-204 and 63A-4-205, authorizing the Risk Management Fund to provide coverage to nonstate entities, are repealed July 1, 2006.

~~[(9)]~~ Title 63A, Chapter 10, State Olympic Coordination Act, is repealed July 1, 2004.]

Section 53. Section **63-56-5** is amended to read:

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

As used in this chapter:

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

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

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

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

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

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

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

(6) "Contract" means any state agreement for the procurement or disposal of supplies,

services, or construction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) "Procurement" means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation, and award of a contract, and all phases of contract administration.

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

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

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

(22) "Purchasing agency" means any state agency other than the Division of Purchasing

and General Services that is authorized by this chapter or its implementing regulations, or by delegation from the chief procurement officer, to enter into contracts.

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

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

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

(26) "Sealed" does not preclude acceptance of electronically sealed and submitted bids or proposals in addition to bids or proposals manually sealed and submitted.

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

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

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

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

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

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

Section 54. Section **63A-1-113** is amended to read:

**63A-1-113. Agency exempt from title.**

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

Section 55. Section **63A-9-101** is amended to read:

**63A-9-101. Definitions.**

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

(b) "Agency" includes the State Board of Education, the Office of Education, each Applied Technology Center, the board of regents, the institutional councils of each higher education institution, and each higher education institution.

(c) "Agency" includes the legislative and judicial branches.

(2) "Committee" means the Motor Vehicle Review Committee created by this chapter.

~~[(4)]~~ (3) "Director" means the director of the division.

~~[(3)]~~ (4) "Division" means the Division of Fleet Operations created by this chapter.

(5) "Executive director" means the executive director of the Department of Administrative Services.

(6) (a) "Motor vehicle" means a self-propelled vehicle capable of carrying passengers.

(b) "Motor vehicle" includes vehicles used for construction and other nontransportation purposes.

(7) "State vehicle" means each motor vehicle owned, operated, or in the possession of an agency.

Section 56. Section **67-3-1** is amended to read:

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

(1) (a) The state auditor is the auditor of public accounts and is independent of any executive or administrative officers of the state.

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

(2) The state auditor shall examine and certify annually in respect to each fiscal year, financial statements showing:

- (a) the condition of the state's finances;
- (b) the revenues received or accrued;
- (c) expenditures paid or accrued;
- (d) the amount of unexpended or unencumbered balances of the appropriations to the agencies, departments, divisions, commissions, and institutions; and
- (e) the cash balances of the funds in the custody of the state treasurer.

(3) (a) The state auditor shall:

(i) audit each permanent fund, each special fund, the General Fund, and the accounts of any department of state government or any independent agency or public corporation as the law requires, as the auditor determines is necessary, or upon request of the governor or the Legislature;

(ii) perform the audits in accordance with generally accepted auditing standards and other auditing procedures as promulgated by recognized authoritative bodies;

(iii) as the auditor determines is necessary, conduct the audits to determine:

- (A) honesty and integrity in fiscal affairs;
- (B) accuracy and reliability of financial statements;
- (C) effectiveness and adequacy of financial controls; and
- (D) compliance with the law.

(b) If any state entity receives federal funding, the state auditor shall ensure that the audit is performed in accordance with federal audit requirements.

(c) (i) The costs of the federal compliance portion of the audit may be paid from an appropriation to the state auditor from the General Fund.

(ii) If an appropriation is not provided, or if the federal government does not specifically provide for payment of audit costs, the costs of the federal compliance portions of the audit shall be allocated on the basis of the percentage that each state entity's federal funding bears to the total federal funds received by the state.

(iii) The allocation shall be adjusted to reflect any reduced audit time required to audit funds passed through the state to local governments and to reflect any reduction in audit time obtained through the use of internal auditors working under the direction of the state auditor.

(4) (a) Except as provided in Subsection (4)(b), the state auditor shall, in addition to financial audits, and as the auditor determines is necessary, conduct performance and special purpose audits, examinations, and reviews of any entity that receives public funds, including a determination of any or all of the following:

(i) the honesty and integrity of all its fiscal affairs;

(ii) whether or not its administrators have faithfully complied with legislative intent;

(iii) whether or not its operations have been conducted in an efficient, effective, and cost-efficient manner;

(iv) whether or not its programs have been effective in accomplishing the intended objectives; and

(v) whether or not its management, control, and information systems are adequate and effective.

(b) The auditor may not conduct performance and special purpose audits, examinations, and reviews of any entity that receives public funds if the entity:

(i) has an elected auditor; and

(ii) has, within the entity's last budget year, had its financial statements or performance formally reviewed by another outside auditor.

(5) The state auditor shall administer any oath or affirmation necessary to the performance of the duties of the auditor's office, and may subpoena witnesses and documents, whether electronic or otherwise, and examine into any matter that the auditor considers necessary.

(6) The state auditor may require all persons who have had the disposition or management of any property of this state or its political subdivisions to submit statements regarding it at the time and in the form that the auditor requires.

(7) The state auditor shall:

(a) except where otherwise provided by law, institute suits in Salt Lake County in relation to the assessment, collection, and payment of its revenues against:

(i) persons who by any means have become entrusted with public monies or property and have failed to pay over or deliver those monies or property; and

(ii) all debtors of the state;

(b) collect and pay into the state treasury all fees received by the state auditor;

(c) perform the duties of a member of all boards of which the state auditor is a member by the constitution or laws of the state, and any other duties that are prescribed by the constitution and by law;

(d) stop the payment of the salary of any state official or state employee who:

(i) refuses to settle accounts or provide required statements about the custody and disposition of public funds or other state property;

(ii) refuses, neglects, or ignores the instruction of the state auditor or any controlling board or department head with respect to the manner of keeping prescribed accounts or funds; or

(iii) fails to correct any delinquencies, improper procedures, and errors brought to the official's or employee's attention;

(e) establish accounting systems, methods, and forms for public accounts in all taxing or fee-assessing units of the state in the interest of uniformity, efficiency, and economy;

(f) superintend the contractual auditing of all state accounts;

(g) subject to Subsection (8), withhold state allocated funds or the disbursement of property taxes from any state taxing or fee-assessing unit, if necessary, to ensure that officials and employees in those taxing units of the state comply with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds; and

(h) subject to Subsection (9), withhold the disbursement of tax monies from any county, if necessary, to ensure that officials and employees in the county comply with Section 59-2-303.1.

(8) Except as otherwise provided by law, the state auditor may not withhold funds under Subsection (7)(g) until a taxing or fee-assessing unit has received formal written notice of

noncompliance from the auditor and has been given 60 days to make the specified corrections.

(9) The state auditor may not withhold funds under Subsection (7)(h) until a county has received formal written notice of noncompliance from the auditor and has been given 60 days to make the specified corrections.

(10) The state auditor shall:

(a) establish audit guidelines and procedures for audits of local mental health and substance abuse authorities and their contract providers, conducted pursuant to Title ~~[17A]~~ 17, Chapter ~~[3]~~ 43, Parts ~~[6]~~ 2, Local Substance Abuse Authorities and ~~[7, Title 62A, Chapter 15, and]~~ 3, Local Mental Health Authorities, Title 51, Chapter ~~[2]~~ 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, and Title 62A, Chapter 15, Substance Abuse and Mental Health Act; and

(b) ensure that those guidelines and procedures provide assurances to the state that:

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

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

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

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

(11) The state auditor may, in accordance with the auditor's responsibilities for political subdivisions of the state as provided in Title 51, Chapter ~~[2, Audits of]~~ 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, initiate audits or investigations of any political subdivision that are necessary to determine honesty and integrity in fiscal affairs, accuracy and reliability of financial statements, effectiveness, and adequacy of financial controls and compliance with the law.

(12) (a) The state auditor may not audit work that the state auditor performed before becoming state auditor.

(b) If the state auditor has previously been a responsible official in state government whose work has not yet been audited, the Legislature shall:

- (i) designate how that work shall be audited; and
- (ii) provide additional funding for those audits, if necessary.

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

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

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

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

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

(v) requests for audits, if disclosure would risk circumvention of an audit.

(b) The provisions of Subsections (13)(a)(i), (ii), and (iii) do not prohibit the disclosure of records or information that relate to a violation of the law by a governmental entity or employee to a government prosecutor or peace officer.

(c) The provisions of this Subsection (13) do not limit the authority otherwise given to the state auditor to classify a document as public, private, controlled, or protected under Title 63, Chapter 2, Government Records Access and Management Act.

Section 57. Section **67-5b-104** is amended to read:

**67-5b-104. Requirements of agreement.**

(1) To qualify for contracting as a Children's Justice Center, a comprehensive, multidisciplinary, nonprofit, intergovernmental body consisting of two or more public agencies and other persons shall enter into written agreements with one another for joint or cooperative action pursuant to this part.

(2) Any agreement to create a center shall specify the following:

- (a) its duration, not to exceed 50 years;
- (b) the precise organization, composition, membership, and nature of any separate legal or administrative entity created, together with the powers delegated;
- (c) its purpose;
- (d) the manner of financing the joint or intergovernmental undertaking and of establishing and maintaining a budget;
- (e) the contracting public agency designated to oversee the accountability of the center, including the budget, costs, personnel, and management pursuant to Title 51, Chapter [~~2, Audits of~~ 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act];
- (f) the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and in disposing of property upon the partial or complete termination; and
- (g) any other necessary and proper matters.

(3) Any agreement made pursuant to this part shall, prior to and as a condition precedent to its becoming effective, be reviewed by the attorney general and the county attorney of the county where the center is located and approved for form and compatibility with the laws of this state.

(4) Prior to its becoming effective, any agreement made pursuant to this part shall be filed with the person who keeps the records of each of the public agencies and other persons who are parties to it.

(5) No agreement made pursuant to this part shall relieve any public agency of any obligation or responsibility imposed upon it by law except that actual and timely performance by an intergovernmental legal entity created to perform joint intergovernmental functions by an agreement made under this section may be offered in satisfaction of the obligation or responsibility.

(6) Any public agency entering into an agreement pursuant to this part may appropriate funds and may sell, lease, give, or otherwise supply tangible and intangible property to a center created to operate the joint or intergovernmental undertaking and may provide personnel or services as may be within its legal power to appropriate, sell, lease, give, supply, or furnish.

(7) Any one or more public agencies may contract with each other or with a legal or administrative entity created pursuant to this part to perform any governmental service, activity, or undertaking which each public agency or person entering into the contract is authorized by law to perform, provided that such contract is authorized by the governing body of each party to the contract.

(8) Any facility or improvement jointly owned or jointly operated by any two or more public agencies and other persons or acquired or constructed pursuant to an agreement under this part may be operated by the intergovernmental body as may be provided by appropriate contract. Payment for the cost of the operation of the facility or improvement shall be made as provided in the contract and in accordance with any appropriation or funding restrictions.

Section 58. Section **67-5b-106** is amended to read:

**67-5b-106. Advisory Board on Children's Justice -- Membership -- Terms -- Duties -- Authority.**

(1) The attorney general shall create the Advisory Board on Children's Justice to advise him about the Children's Justice Center Program.

(2) The board shall be composed of:

- (a) the director of each Children's Justice Center;
  - (b) the chair of each local advisory board established under Section 67-5b-105;
  - (c) the attorney general or the attorney general's designee;
  - (d) a representative of the Utah Sheriffs Association, appointed by the governor;
  - (e) a chief of police, appointed by the governor;
  - (f) one juvenile court judge and one district court judge, appointed by the chief justice;
  - (g) a representative of the court appointed guardians ad litem, appointed by the chief justice;
  - (h) a designated representative of the Division of Child and Family Services within the Department of Human Services, appointed by the director of that division;
  - (i) a licensed mental health professional, appointed by the governor;
  - (j) a person experienced in working with children with disabilities, appointed by the governor;
  - (k) one criminal defense attorney, licensed by the Utah State Bar and in good standing, appointed by the Utah Bar Commission;
  - (l) one criminal prosecutor, licensed by the Utah State Bar and in good standing, appointed by the Prosecution Council;
  - (m) a member of the governor's staff, appointed by the governor;
  - (n) a member from the public, appointed by the governor, who exhibits sensitivity to the concerns of parents; and
  - (o) additional members appointed as needed by the attorney general.
- (3) (a) Except as required by Subsection (3)(b), as terms of current board members expire, the appointing authority shall appoint each new member or reappointed member to a four-year term.
- (b) Notwithstanding the requirements of Subsection (3)(a), the appointing authority shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(4) The Advisory Board on Children's Justice shall:

(a) coordinate and support the statewide purpose of the program;

(b) recommend statewide guidelines for the administration of the program;

(c) advise the contracting entities of each Children's Justice Center;

(d) recommend training and improvements in training;

(e) review, evaluate, and make recommendations concerning state investigative, administrative, and judicial handling in both civil and criminal cases of child abuse, child sexual abuse, and neglect;

(f) recommend programs to improve the prompt and fair resolution of civil and criminal court proceedings; and

(g) recommend changes to state laws and procedures to provide comprehensive protection for children of abuse, child sexual abuse, and neglect.

(5) The Advisory Board on Children's Justice may not supersede the authority of the contracting public agency to oversee the accountability of the center, including the budget, costs, personnel, and management pursuant to Section 67-5b-104 and Title 51, Chapter ~~[2, Audits of]~~ 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.

Section 59. Section **70A-8-101** is amended to read:

**70A-8-101. Definitions.**

(1) As used in this chapter:

(a) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(b) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(c) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(d) "Certificated security" means a security that is represented by a certificate.

(e) "Clearing corporation" means:

(i) a person that is registered as a "clearing agency" under the federal securities laws;

(ii) a federal reserve bank; or

(iii) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(f) "Communicate" means to:

(i) send a signed writing; or

(ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(g) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquired a security entitlement by virtue of Subsection 70A-8-501(2)(b) or (c), that person is the entitlement holder.

(h) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(i) (i) "Financial asset," except as otherwise provided in Section 70A-8-102, means:

(A) a security;

(B) an obligation of a person or a share, participation, or other interest ~~[is]~~ in a person or in property or an enterprise of a person, which is or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(C) any property that is held by a securities intermediary for another person in a securities account if that securities intermediary has expressly agreed with the other person that

the property is to be treated as a financial asset under this chapter.

(ii) As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(j) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this chapter, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(k) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(l) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(m) "Registered form," as applied to a certificated security, means a form in which:

(i) the security certificate specifies a person entitled to the security; and  
(ii) a transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(n) "Securities intermediary" means:

(i) a clearing corporation; or  
(ii) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(o) "Security," except as otherwise provided in Section 70A-8-102, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) which:

(A) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) is a medium for investment and by its terms expressly provides that it is a security governed by this chapter.

(p) "Security certificate" means a certificate representing a security.

(q) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5.

(r) "Uncertificated security" means a security that is not represented by a certificate.

(2) Other definitions applying to this chapter and the sections in which they appear are:

(a) "appropriate person," Section 70A-8-106;

(b) "control," Section 70A-8-105;

(c) "delivery," Section 70A-8-301;

(d) "investment company security," Section 70A-8-102;

(e) "issuer," Section 70A-8-201;

(f) "overissue," Section 70A-8-210;

(g) "protected purchaser," Section 70A-8-303; and

(h) "securities account," Section 70A-8-501.

(3) In addition, Chapter 1, General Provisions, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

(4) The characterization of a person, business, or transaction for purposes of this chapter does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

Section 60. Section **75-5a-119** is amended to read:

**75-5a-119. Renunciation, resignation, death, or removal of custodian -- Designation of successor custodian.**

(1) A person nominated under Section 75-5a-104 or designated under Section 75-5a-110

as custodian may decline to serve by delivering a valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under Section 75-5a-104, the person who made the nomination may nominate a substitute custodian under Section 75-5a-104; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under Subsection 75-5a-110(1). The custodian designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under Section ~~[75-5a-104]~~ 75-5a-105 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(3) A custodian may resign at any time by delivering written notice to the minor if the minor is 14 years of age or older and to the successor custodian and by delivering the custodial property to the successor custodian.

(4) (a) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor is 14 years of age or older, the minor may designate as successor custodian, in the manner prescribed in Subsection (2), an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor is not yet 14 years of age or fails to act within 60 days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian.

(b) If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(5) A custodian who declines to serve under Subsection (1) or resigns under Subsection (3), or the legal representative of a deceased or incapacitated custodian shall as soon as

practicable place the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor if he is 14 years of age or older, may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under Section 75-5a-105 or to require the custodian to give appropriate bond.

Section 61. Section **77-19-201** is amended to read:

**77-19-201. Definition.**

As used in this part, "incompetent to be executed" means that [if], due to mental condition, an inmate is unaware of either the punishment he is about to suffer or why he is to suffer it.

Section 62. Section **78-12-33.5** is amended to read:

**78-12-33.5. Statute of limitations -- Asbestos damages -- Action by state or governmental entity.**

(1) (a) No statute of limitations or repose may bar an action by the state or other governmental entity to recover damages from any manufacturer of any construction materials containing asbestos, when the action arises out of the manufacturer's providing the materials, directly or [~~through~~] through other persons, to the state or other governmental entity or to a contractor on behalf of the state or other governmental entity.

(b) Subsection (1)(a) provides for actions not yet barred, and also acts retroactively to permit actions under this section that are otherwise barred.

(2) As used in this section, "asbestos" means asbestiform varieties of:

- (a) chrysotile (serpentine);
- (b) crocidolite (riebeckite);
- (c) amosite (cummingtonite-grunerite);
- (d) anthophyllite;

(e) tremolite; or

(f) actinolite.