

**Representative Gregory H. Hughes** proposes the following substitute bill:

**INDIGENT DEFENSE ACT AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gregory H. Hughes**

Senate Sponsor: Wayne L. Niederhauser

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**LONG TITLE**

**General Description:**

This bill modifies the Indigent Defense Act.

**Highlighted Provisions:**

This bill:

- ▶ defines "defense service provider", "legal defense", and "regional legal defense";
  - ▶ allows a person charged with a serious offense to file a claim of indigency with the court;
  - ▶ requires a defense service provider to provide all legal defense services as a package;
  - ▶ provides procedures for the court to follow when a defendant hires private counsel;
- and
- ▶ extends subsequent terms of county commissioners and county attorneys who serve on the Indigent Defense Fund Board to be four years rather than two years.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



26 AMENDS:

27 77-32-201, as last amended by Laws of Utah 2011, Chapter 108

28 77-32-202, as last amended by Laws of Utah 2011, Chapter 108

29 77-32-301, as renumbered and amended by Laws of Utah 1997, Chapter 354

30 77-32-302, as last amended by Laws of Utah 2006, Chapter 49

31 77-32-303, as last amended by Laws of Utah 2008, Chapter 3

32 77-32-304, as renumbered and amended by Laws of Utah 1997, Chapter 354

33 77-32-304.5, as last amended by Laws of Utah 2006, Chapter 49

34 77-32-305.5, as enacted by Laws of Utah 1997, Chapter 307

35 77-32-306, as last amended by Laws of Utah 2006, Chapter 49

36 77-32-307, as renumbered and amended by Laws of Utah 1997, Chapter 354

37 77-32-401, as last amended by Laws of Utah 2010, Chapter 286



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

40 Section 1. Section 77-32-201 is amended to read:

41 **77-32-201. Definitions.**

42 For the purposes of this chapter:

43 (1) "Board" means the Indigent Defense Funds Board created in Section 77-32-401.

44 (2) "Compelling reason" shall include one or more of the following circumstances

45 relating to the contracting attorney:

46 (a) a conflict of interest;

47 (b) the contracting attorney does not have sufficient expertise to provide an effective  
48 defense of the indigent; or

49 (c) the legal defense [~~resource~~] is insufficient or lacks expertise to provide a complete  
50 defense.

51 (3) "Defense resources" means a competent investigator, expert witness, scientific or  
52 medical testing, or other appropriate means necessary, for an effective defense of an indigent,  
53 but does not include legal counsel.

54 (4) "Defense services provider" means a legal aid association, legal defender's office,  
55 regional legal defense association, law firm, attorney, or attorneys contracting with a county or  
56 municipality to provide legal defense and includes any combination of counties or

57 municipalities to provide regional legal defense.

58 [(4)] (5) "Indigent" means a person qualifying as an indigent under indigency standards  
59 established in Part 3, Counsel for Indigents.

60 [(5)] (6) "Legal aid association" means a nonprofit defense association or society that  
61 provides [~~counsel and~~] legal defense [~~resources~~] for indigent defendants.

62 [(6)] (7) "Legal defender's office" means a [~~department~~] division of county government  
63 created and authorized by the county legislative body to provide legal representation in  
64 criminal matters to indigent defendants.

65 [(7)] (8) "Legal defense" means [~~legal counsel, defense resources, or both.~~] to:

66 (a) provide defense counsel for each indigent who faces the ~~H~~→ [substantial probability of  
67 the] potential ←~~H~~ deprivation of the indigent's liberty;

68 (b) afford timely representation by defense counsel;

69 (c) provide the defense resources necessary for a complete defense;

70 (d) assure undivided loyalty of defense counsel to the client;

71 (e) provide a first appeal of right; and

72 (f) prosecute other remedies before or after a conviction, considered by defense counsel  
73 to be in the interest of justice except for other and subsequent discretionary appeals or  
74 discretionary writ proceedings.

75 [(8)] (9) "Participating county" means a county which has complied with the provisions  
76 of this chapter for participation in the Indigent Capital Defense Trust Fund as provided in  
77 Sections 77-32-602 and 77-32-603 or the Indigent Felony Defense Trust Fund as provided in  
78 Sections 77-32-702 and 77-32-703.

79 (10) "Regional legal defense" means a defense services provider which provides legal  
80 defense to any combination of counties or municipalities through an interlocal cooperation  
81 agreement pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, and Subsection  
82 77-32-306(3).

83 [(9)] (11) "Serious offense" means a felony or capital felony.

84 Section 2. Section **77-32-202** is amended to read:

85 **77-32-202. Procedure for determination of indigency -- Standards.**

86 (1) A determination of indigency or continuing indigency of any defendant may be  
87 made by the court at any stage of the proceedings.

88 (2) (a) Any defendant claiming indigency who is charged with a crime the penalty of  
89 which is a class A misdemeanor or [~~felony~~] serious offense shall file with the court a fully  
90 complete affidavit verified by a notary or other person authorized by law to administer an oath  
91 and file a copy of that affidavit with the prosecuting entity. The affidavit shall contain the  
92 factual information required in this section and by the court.

93 (b) A defendant claiming indigency who is charged with a crime the penalty of which  
94 is less than a class A misdemeanor is not required to comply with the requirements of  
95 Subsection (2)(a) and Subsection (4).

96 (3) (a) "Indigency" means that a person:

97 (i) does not have sufficient income, assets, credit, or other means to provide for the  
98 payment of legal counsel and all other necessary expenses of representation without depriving  
99 that person or the family of that person of food, shelter, clothing, and other necessities; or

100 (ii) has an income level at or below 150% of the United States poverty level as defined  
101 by the most recently revised poverty income guidelines published by the United States  
102 Department of Health and Human Services; and

103 (iii) has not transferred or otherwise disposed of any assets since the commission of the  
104 offense with the intent of establishing eligibility for the appointment of counsel under this  
105 chapter.

106 (b) In making a determination of indigency, the court shall consider:

107 (i) the probable expense and burden of defending the case;

108 (ii) the ownership of, or any interest in, any tangible or intangible personal property or  
109 real property, or reasonable expectancy of any such interest;

110 (iii) the amounts of debts owned by the defendant or that might reasonably be incurred  
111 by the defendant because of illness or other needs within the defendant's family;

112 (iv) number, ages, and relationships of any dependents;

113 (v) the reasonableness of fees and expenses charged to the defendant by the defendant's  
114 attorney and the scope of representation undertaken where the defendant is represented by  
115 privately retained defense counsel; and

116 (vi) other factors considered relevant by the court.

117 (4) (a) Upon making a finding of indigence, the court shall enter the findings on the  
118 record and enter an order assigning a defense [~~counsel~~] services provider to represent the

119 defendant in the case.

120 (b) Upon finding indigence when the defendant has privately retained counsel, the  
121 court, subject to Section 77-32-303, shall enter the findings into the record and issue an order  
122 directing the county or municipality to coordinate the providing of defense resources as  
123 appropriate.

124 (c) The clerk of the court shall send a copy of the affidavit and order to the prosecutor  
125 and to the county clerk or municipal recorder.

126 (5) If the county or municipality providing the defense [~~counsel~~] services provider has  
127 any objections to or concerns with the finding of indigency and assignment of a defense  
128 [~~counsel~~] services provider or the continuing of indigency status and assignment of a [~~public~~  
129 ~~defender~~] defense services provider, it shall file notice with the court and a hearing shall be  
130 scheduled to review the findings and give the county or municipality the opportunity to present  
131 evidence and arguments as to the reasons the finding of indigency should be reversed and the  
132 court shall proceed as provided in Subsection 77-32-302(4).

133 (6) (a) If the trial court finds within one year after the determination of indigency that  
134 any defendant was erroneously or improperly determined to be indigent, the county or  
135 municipality may proceed against that defendant for the reasonable value of the services  
136 rendered to the defendant, including all costs paid by the county or municipality in providing  
137 the legal defense [~~counsel~~].

138 (b) Subsection (6)(a) does not affect any restitution required of the defendant by the  
139 court pursuant to [~~Title 77,~~] Chapter 32a, Defense Costs.

140 (c) A defendant claiming indigency has a continuing duty to inform the court of any  
141 material changes or change in circumstances that may affect the determination of his eligibility  
142 for indigency.

143 (d) Any person who intentionally or knowingly makes a material false statement or  
144 omits a material fact in an affidavit for indigency is guilty of a class B misdemeanor.

145 Section 3. Section **77-32-301** is amended to read:

146 **77-32-301. Minimum standards for defense of an indigent.**

147 (1) Each county, city, and town shall provide for the legal defense of an indigent in  
148 criminal cases in the courts and various administrative bodies of the state in accordance with  
149 [~~the following minimum~~] legal defense standards[;] as defined in Subsection 77-32-208(8).

150 ~~[(1) provide counsel for each indigent who faces the substantial probability of the~~  
151 ~~deprivation of the indigent's liberty;]~~  
152 ~~[(2) afford timely representation by competent legal counsel;]~~  
153 ~~[(3) provide the investigatory resources necessary for a complete defense;]~~  
154 ~~[(4) assure undivided loyalty of defense counsel to the client;]~~  
155 ~~[(5) proceed with a first appeal of right; and]~~  
156 ~~[(6) prosecute other remedies before or after a conviction, considered by defense~~  
157 ~~counsel to be in the interest of justice except for other and subsequent discretionary appeals or~~  
158 ~~discretionary writ proceedings.]~~

159 (2) (a) A county or municipality which contracts with a defense services provider shall  
160 provide that all legal defense elements be included as a single package of legal defense services  
161 made available to indigents, except as provided in Sections 77-32-302 and 77-32-303.

162 (b) When needed to avoid a conflict of interest between:

163 (i) trial counsel and counsel on appeal, a defense services provider contract shall also  
164 provide for separate trial and appellate counsel; and

165 (ii) counsel for co-defendants, a defense services provider contract shall also provide  
166 for separate trial counsel.

167 (c) If a county or municipality contracts to provide all legal defense elements as a  
168 single package, a defendant may not receive funding for defense resources unless represented  
169 by publicly funded counsel or as provided in Subsection 77-32-303(2).

170 Section 4. Section **77-32-302** is amended to read:

171 **77-32-302. Assignment of counsel on request of indigent or order of court.**

172 (1) ~~[Legal counsel]~~ The defense services provider shall be assigned to represent each  
173 indigent and ~~[the indigent]~~ shall ~~[also be provided access to]~~ provide the legal defense  
174 ~~[resources]~~ services necessary for an effective defense, if the indigent is under arrest for or  
175 charged with a crime in which there is a substantial probability that the penalty to be imposed  
176 is confinement in either jail or prison if:

177 (a) the indigent requests ~~[counsel or]~~ legal defense ~~[resources, or both];~~ or

178 (b) the court on its own motion or otherwise orders ~~[counsel, defense resources, or~~  
179 ~~both]~~ legal defense services and the defendant does not affirmatively waive or reject on the  
180 record the opportunity to be ~~[represented and]~~ provided legal defense ~~[resources].~~

181 (2) (a) If a county responsible for providing indigent legal defense~~[, including counsel~~  
182 ~~and defense resources,]~~ has established a county legal defender's office and the court has  
183 received notice of the establishment of the office, the court shall assign to the county legal  
184 defender's office the responsibility to defend indigent defendants within the county and provide  
185 defense resources.

186 (b) If the county or municipality responsible to provide for the legal defense of an  
187 indigent~~[, including defense resources and counsel,]~~ has arranged by contract to provide those  
188 services through a ~~[legal aid association]~~ defense services provider, and the court has received  
189 notice or a copy of the contract, the court shall assign the ~~[legal aid association]~~ defense  
190 services provider named in the contract to ~~[defend the indigent and]~~ provide legal defense  
191 ~~[resources]~~.

192 ~~[(c) If the county or municipality responsible for providing indigent legal defense,~~  
193 ~~including counsel and defense resources, has contracted to provide those services through~~  
194 ~~individual attorneys, individual defense resources, or associations providing defense resources,~~  
195 ~~and the court has received notice or a copy of the contracts, the court shall assign a contracting~~  
196 ~~attorney as the legal counsel to represent an indigent and a contracted defense resource to~~  
197 ~~provide defense-related services.]~~

198 ~~[(d)]~~ (c) If no county ~~[legal defender's office]~~ or municipal defense services provider  
199 contract exists, the court shall select and assign ~~[an attorney or]~~ a legal defense ~~[resource if:]~~  
200 provider.

201 ~~[(i) the contract for indigent legal services is with multiple attorneys or resources; or]~~  
202 ~~[(ii) the contract is with another attorney in the event of a conflict of interest.]~~

203 ~~[(e)]~~ (d) If the court considers the assignment of a noncontracting ~~[attorney or defense~~  
204 ~~resource to provide]~~ legal ~~[services]~~ defense provider to an indigent defendant despite the  
205 existence of ~~[an indigent legal]~~ a defense services provider contract and the court has a copy or  
206 notice of the contract, before the court may make the assignment, it shall:

207 (i) set the matter for a hearing;

208 (ii) give proper notice of the hearing to the attorney of the responsible county or  
209 municipality and county clerk or municipal recorder; and

210 (iii) make findings that there is a compelling reason to appoint a noncontracting  
211 attorney ~~[or defense resource]~~.

212           ~~[(f)]~~ (e) The indigent's preference for other counsel or defense resources may not be  
213 considered a compelling reason justifying the appointment of a noncontracting ~~[attorney or]~~  
214 defense ~~[resource]~~ services provider.

215           (3) The court may make a determination of indigency at any time.

216           Section 5. Section **77-32-303** is amended to read:

217           **77-32-303. Standard for court to appoint noncontracting attorney or order the**  
218 **provision of defense resources -- Hearing.**

219           (1) If a county or municipality has contracted [for, or otherwise made arrangements for,  
220 the legal defense of indigents, including a competent attorney and defense resources] or  
221 otherwise provided for a defense services provider, the court may not appoint a noncontracting  
222 attorney [or resource either] under this part, Section 78B-1-151, or Rule 15, Utah Rules of  
223 Criminal Procedure, unless the court:

224           ~~[(1)]~~ (a) conducts a hearing with proper notice to the ~~[responsible entity]~~ county clerk  
225 or municipal recorder, with a copy of the notice provided to the prosecutor, to consider the  
226 authorization or designation of a noncontract attorney [or resource]; and

227           ~~[(2)]~~ (b) makes a finding that there is a compelling reason to authorize or designate a  
228 noncontracting attorney ~~[or resources]~~ for the indigent defendant.

229           (2) Except as provided in Subsection (3), if a county or municipality has contracted or  
230 otherwise provided for a defense services provider, the court may not order under this part,  
231 Section 78B-1-151, or Rule 15, Utah Rules of Criminal Procedure, and the county or  
232 municipality may not provide defense resources for a defendant who has retained private  
233 counsel.

234           (3) The court may order, and the county or municipality may provide, defense  
235 resources to a defendant represented by private counsel only if:

236           (a) the court conducts a hearing with proper notice to the county clerk or municipal  
237 recorder, with a copy of the notice provided to the prosecutor;

238           (b) the court conducts an in camera review of the defense contract, a full accounting of  
239 the defense retainer, anticipated costs of defense resources and other relevant defense records  
240 and finds by clear and convincing evidence all of the following:

241           (i) the defendant would be prejudiced by the substitution of a contracted defense  
242 services provider and any prejudice cannot be remedied by a continuance or other alternative

243 means;

244 (ii) at the time of retention of private counsel, the defendant and attorney entered into a  
245 written contract which provided that the defendant had the means to pay for fees and defense  
246 resources;

247 (iii) there has been an unforeseen change in circumstances which requires defense  
248 resources beyond the defendant's ability to pay; and

249 (iv) all of the above representations are made in good faith and are not calculated to  
250 allow the defendant or defense attorney to avoid the requirements of this section.

251 (4) The court may not order the defense services provider to act as co-counsel with a  
252 privately retained legal counsel as a means of circumventing the requirements of this section.

253 Section 6. Section **77-32-304** is amended to read:

254 **77-32-304. Duties of assigned counsel -- Compensation.**

255 (1) When representing an indigent, the assigned counsel shall:

256 (a) counsel and defend the indigent at every stage of the proceeding following  
257 assignment; and

258 (b) file any first appeal of right or other remedy before or after conviction that the  
259 assigned counsel considers to be in the interest of justice, except for other and subsequent  
260 discretionary appeals or discretionary writ proceedings.

261 (2) An assigned counsel may not [~~have the duty or power under this section to~~]  
262 represent an indigent in any discretionary appeal or action for a discretionary writ, other than in  
263 a meaningful first appeal of right to assure the indigent an adequate opportunity to present the  
264 indigent's claims fairly in the context of the appellate process of this state.

265 (3) An assigned counsel for an indigent shall be entitled to compensation upon:

266 (a) approval of the district court where the original trial was held;

267 (b) a showing that:

268 (i) the indigent has been denied a constitutional right; or

269 (ii) there was newly discovered evidence that would show the indigent's innocence; and

270 (c) a clear showing that the legal services rendered by counsel were:

271 (i) other than that required under this chapter or under a separate fee arrangement; and

272 (ii) necessary for the adequate defense of the indigent and not for the purpose of  
273 delaying the judgment of the original trier of fact.

274 Section 7. Section **77-32-304.5** is amended to read:

275 **77-32-304.5. Reasonable compensation for defense counsel for indigents.**

276 (1) This section does not apply to any attorney~~[(a)]~~ acting as a defense services  
277 provider or otherwise under contract with the county or municipality for defense of an indigent  
278 person[;].

279 ~~[(b) in the legal defender organization, legal aid agency, law firm, or public defender~~  
280 ~~association with which that attorney is professionally associated; or]~~

281 ~~[(c) who is an employee of a county legal defender's office.]~~

282 (2) (a) The county or municipality shall pay reasonable compensation to any attorney  
283 assigned by the court under Subsection 77-32-306 at the conclusion of the representation or any  
284 segment of the representation, as provided in Subsections (2)(b), (c), (d), and (e):

285 (i) before the district or justice courts, including interlocutory appeals; and

286 (ii) before the appellate court on a first appeal of right.

287 (b) The legislative body of each county and municipality shall establish and annually  
288 review guidelines for the rate of compensation, taking into account:

289 (i) the nature and complexity of the case;

290 (ii) the competency and years of experience in criminal defense of the assigned  
291 attorney;

292 (iii) the adjusted net hourly rate incurred by the county or municipality for a prosecutor  
293 or public defender of equivalent experience and competency; and

294 (iv) the prevailing rates within the judicial district for comparable services.

295 (c) If the legislative body of a county or municipality does not establish the rate  
296 guidelines, the rate of compensation shall be determined by the trial judge or a judge other than  
297 the trial judge if requested by:

298 (i) the assigned attorney; or

299 (ii) the county or municipality.

300 (d) If the assigned attorney disagrees with the amount of compensation paid or  
301 contemplated for payment by the county or municipality, the assigned attorney shall  
302 nonetheless continue to represent the indigent defendant and may file a claim against:

303 (i) the county pursuant to Section 17-50-401, in which event the period for a denial by  
304 the county shall be 20 days; or

305 (ii) the municipality pursuant to Title 10, Chapter 6, Uniform Fiscal Procedures Act for  
306 Utah Cities.

307 (e) In determining the reasonable compensation to be paid to defense counsel under  
308 Subsections (2)(c) and (d), the court shall consider the factors contained in Subsections  
309 (2)(b)(i) through (iv).

310 (f) The total compensation in a noncapital case may not, without prior court approval  
311 following a hearing, exceed:

312 (i) \$3,500 for each assigned attorney in a case in which one or more felonies is  
313 charged;

314 (ii) \$1,000 for each assigned attorney in a case in which only misdemeanors or lesser  
315 offenses are charged; or

316 (iii) \$2,500 for each assigned attorney in the representation of an indigent in an  
317 appellate court on a first appeal of right.

318 Section 8. Section **77-32-305.5** is amended to read:

319 **77-32-305.5. Reimbursement of extraordinary expense.**

320 (1) For the purposes of this section, an "extraordinary expense" means the collective  
321 expense which exceeds \$500 for defense resources or any particular service or item such as  
322 experts, investigators, surveys, or demonstrative evidence.

323 (2) The county or municipality shall reimburse expenses, exclusive of overhead and  
324 extraordinary expense not approved by the court in accordance with this chapter, reasonably  
325 incurred by assigned attorneys for indigent defendants through a contracted defense services  
326 provider or if so ordered by the court based on a hearing held in accordance with Subsections  
327 77-32-303(2) and (3), or for an appointed counsel under Section 77-32-304.5.

328 (3) The assigned attorney shall file a motion with the court for approval of the  
329 proposed expenditure for any extraordinary expense before the expense is incurred. The  
330 motion shall be heard and ruled upon by a judge other than the trial judge if so requested by  
331 either party or upon the motion of the trial judge.

332 Section 9. Section **77-32-306** is amended to read:

333 **77-32-306. County or municipal legislative body to provide legal defense.**

334 (1) The county or municipal legislative body shall either:

335 (a) contract [~~to provide the legal defense, including counsel, defense resources, or both,~~

336 as prescribed by this chapter, and as available, through:] with a defense services provider; or

337 [~~(i) a legal aid association; or~~]

338 [~~(ii) one or more defense associations or attorneys and qualified defense resources; or~~]

339 (b) authorize the court to provide the services prescribed by this chapter by assigning a  
340 qualified attorney in each case.

341 (2) A county may create a county legal defender's office to provide for the legal  
342 defense[, including counsel and defense resources or both,] as prescribed by this chapter.

343 (3) A county legal defender's office may, through the county legislative body contract  
344 with other counties and municipalities within a judicial district to provide the legal services as  
345 prescribed.

346 (4) Counties and municipalities are encouraged to enter into interlocal cooperation  
347 agreements pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, for the provision of  
348 legal defense, including multiple counties and municipalities contracting with either a private  
349 defense services provider or with a legal defender's office. An interlocal agreement may  
350 provide for:

351 (a) the creation of or contract with a private defense services provider, as defined in  
352 Subsection 77-32-201(4);

353 (b) multiple counties or municipalities to contract with a county legal defender's office,  
354 as defined in 77-32-201(7); or

355 (c) the creation of an interlocal entity under the provisions of Section 11-13-203.

356 [~~(4)~~] (5) When a county or municipality has contracted under Subsection (1)(a) or a  
357 county has created a legal defender's office as provided under Subsection (2) to provide the  
358 legal [~~counsel and~~] defense resources required by this chapter, the [~~contracted legal aid~~  
359 ~~association or attorneys, contracted defense resources, and the county legal defender's office~~  
360 ~~are~~] legal services provider is the exclusive source from which the legal defense may be  
361 provided, unless the court finds a compelling reason for the appointment of noncontracting  
362 attorneys and defense resources, under the provisions of Section 77-32-302 or 77-32-303, in  
363 which case the judge shall state the compelling reason and the findings of the hearing held  
364 under Subsections 77-32-303(2) and (3) on the record.

365 (6) A county or municipality may, by ordinance, provide for some other means which  
366 are constitutionally adequate for legal defense of indigents.

367 Section 10. Section **77-32-307** is amended to read:

368 **77-32-307. Expenditures of county or municipal funds declared proper -- Tax**  
369 **levy authorized.**

370 (1) An expenditure by any county or [~~incorporated~~] municipality is considered a proper  
371 use of public funds if the expenditure is necessary to carry out the purposes defined in this  
372 chapter.

373 (2) A donation to a nonprofit legal aid or other association charged with the duty to  
374 provide the services is a proper use of public funds.

375 (3) Any county or [~~incorporated area~~] municipality of the state is authorized to levy and  
376 collect taxes to meet the requirements of this chapter.

377 Section 11. Section **77-32-401** is amended to read:

378 **77-32-401. Indigent Defense Funds Board -- Members -- Administrative support.**

379 (1) There is created within the Division of Finance the Indigent Defense Funds Board  
380 composed of the following nine members:

381 (a) two members who are current commissioners or county executives of participating  
382 counties appointed by the board of directors of the Utah Association of Counties;

383 (b) one member at large appointed by the board of directors of the Utah Association of  
384 Counties;

385 (c) two members who are current county attorneys of participating counties appointed  
386 by the Utah Prosecution Council;

387 (d) the director of the Division of Finance or his designee;

388 (e) one member appointed by the Administrative Office of the Courts; and

389 (f) two members who are private attorneys engaged in or familiar with the criminal  
390 defense practice appointed by the members of the board listed in Subsections (1)(a) through

391 (e).

392 (2) Members shall serve four-year terms[~~]; however, one~~. One of the county  
393 commissioners[~~;~~] and one of the county attorneys appointed to the initial board shall serve  
394 two-year terms, and the remaining other members of the initial board shall be appointed for  
395 four-year terms. After the initial two-year terms of the county commissioner and county  
396 attorney, those board positions shall have four-year terms.

397 (3) A vacancy is created if a member appointed under:

398 (a) Subsection (1)(a) no longer serves as a county commissioner or county executive;

399 or

400 (b) Subsection (1)(c) no longer serves as a county attorney.

401 (4) When a vacancy occurs in the membership for any reason, a replacement shall be

402 appointed for the remaining unexpired term in the same manner as the original appointment.

403 (5) The board may contract for administrative support for up to \$15,000 annually to be

404 paid proportionally from each fund.

405 (6) A member may not receive compensation or benefits for the member's service, but

406 may receive per diem and travel expenses in accordance with:

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

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

409 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

410 63A-3-107.

411 (7) Per diem and expenses for board members shall be paid proportionally from each

412 fund.

413 (8) Five members shall constitute a quorum and, if a quorum is present, the action of a

414 majority of the members present shall constitute the action of the board.